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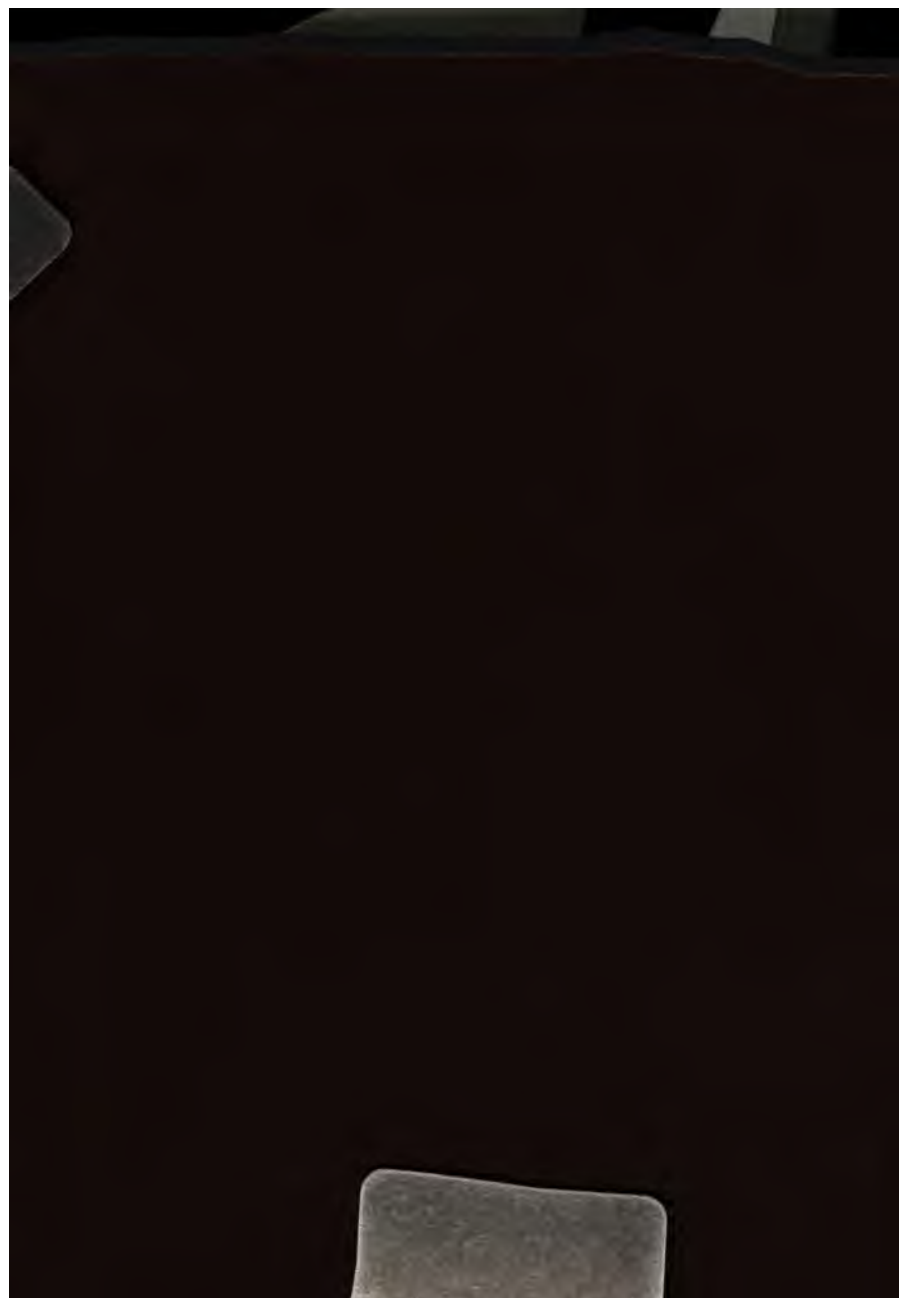
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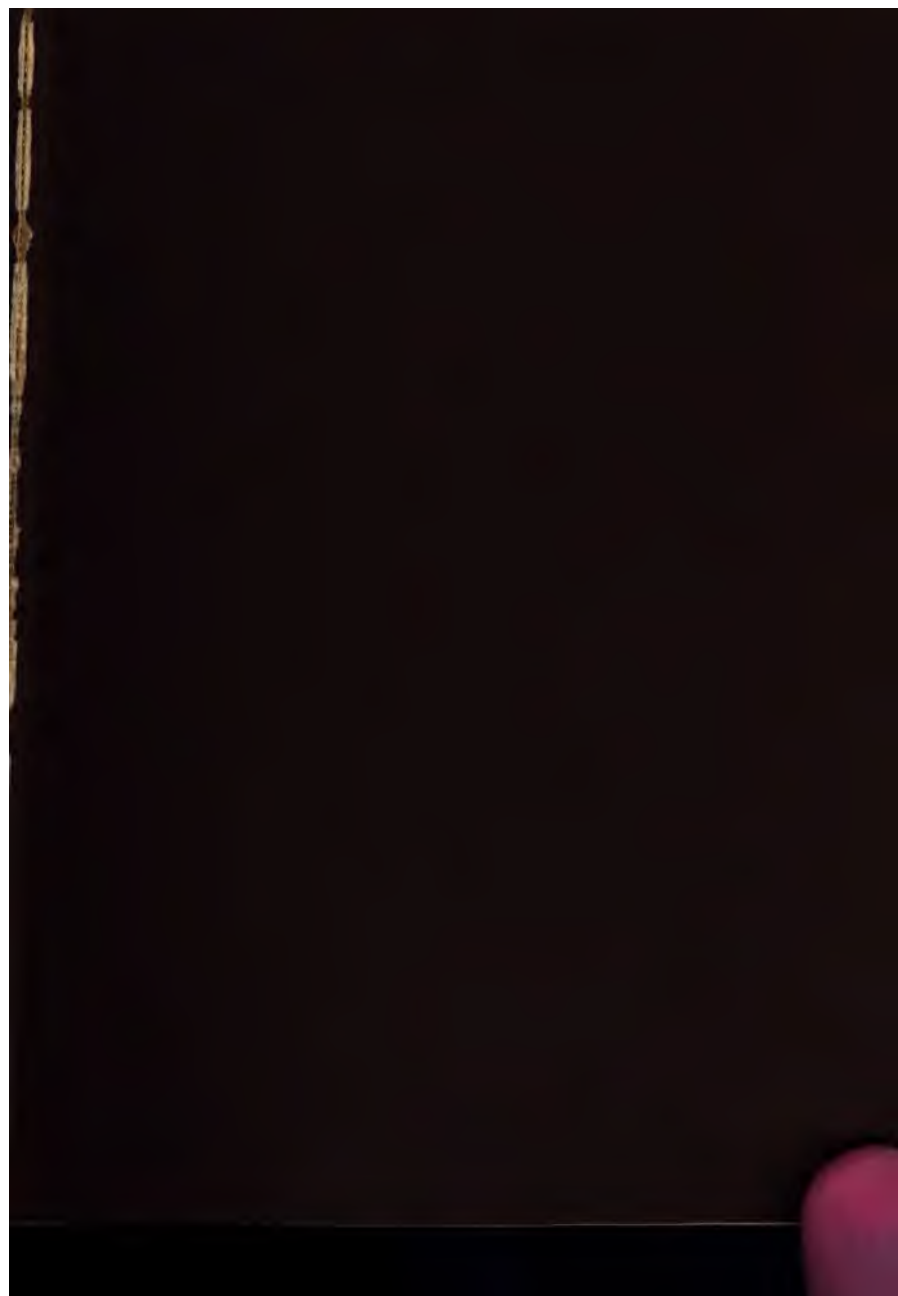
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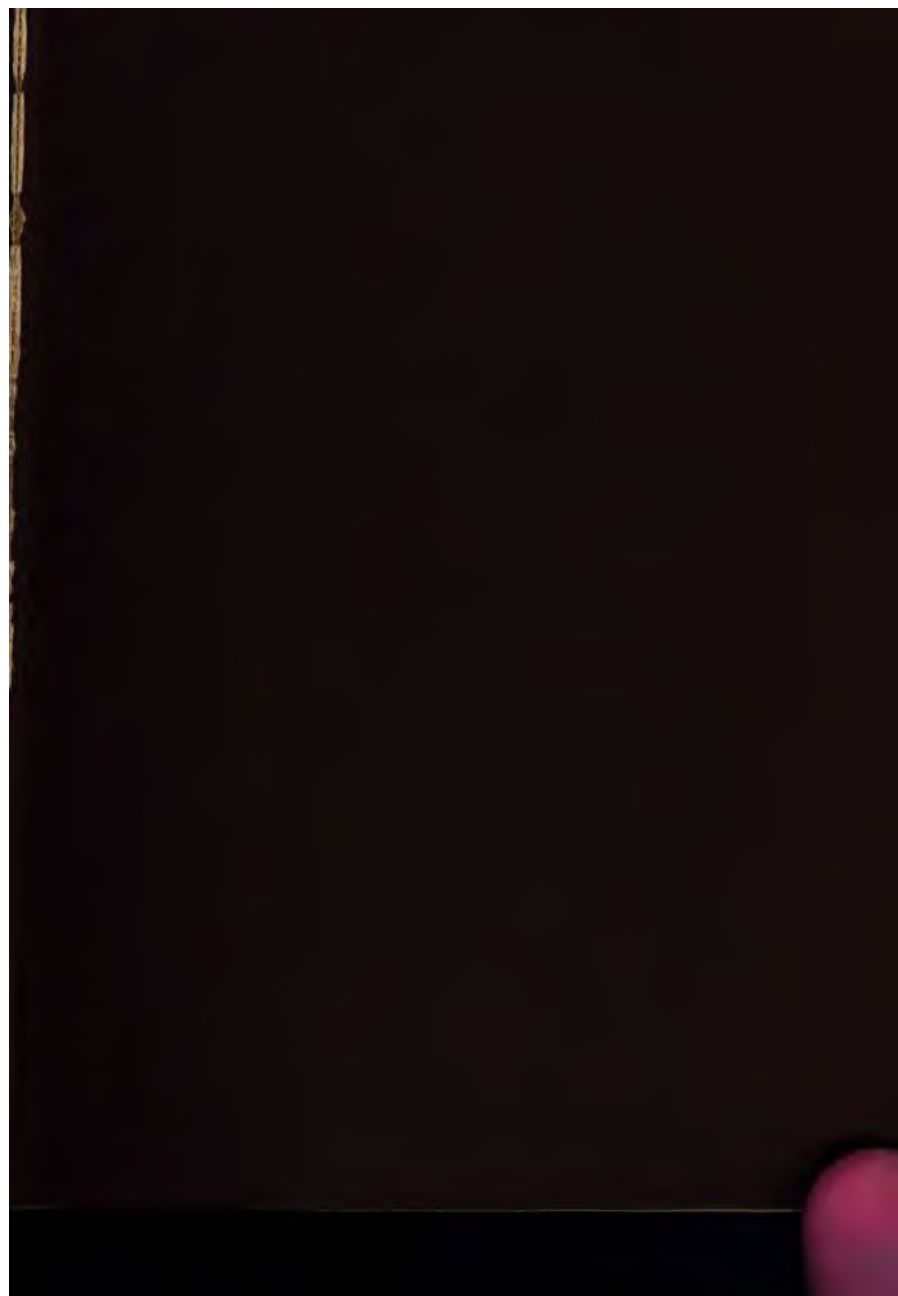
HANDY BOOK  
ON  
MILITARY LAW











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A HANDY TEXT-BOOK

ON

MILITARY LAW





# A HANDY TEXT-BOOK

ON

## MILITARY LAW

ARRANGED ACCORDING TO THE SYLLABUS,  
QUEEN'S REGULATIONS

AND COMPRISING

SYNOPSIS OF PARTS OF THE RESERVE FORCES ACT, 1882;  
MILITIA ACT, 1882; ARMY ACT, 1881; AND SOME  
EXAMINATION QUESTIONS

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WILLIAM BLACKWOOD AND SONS  
EDINBURGH AND LONDON  
MDCCCLXXXIV



## P R E F A C E.

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THE chief object of this work is to assist officers qualifying for promotion in preparing for the examination on Military Law: it is also hoped that it may prove useful to others. The compiler has therefore collected all the information prescribed for the present course from the various Acts, Rules, Regulations, and Orders, and has arranged it with reference to the syllabus of the subjects of examination, Queen's Regulations, 1883. His aim is to present students with a clear and systematic exposition of all the subjects embraced in the Military Law Examination, and at the same time to avoid the inclusion of any superfluous or irrelevant matter. Every endeavour has been made in this volume to facilitate the study of each branch of the subject by itself, and to render unnecessary constant reference to other







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**A HANDY TEXT-BOOK**

**ON**

**MILITARY LAW**

# CHAPTER IV.

## COURTS-MARTIAL.

DESCRIPTIONS OF,—CONVENING—COMPOSITION—JURISDICTION—MEMBERS: appointment, qualification, rank of — GENERAL LAWS AS TO PROCEDURE—TRIAL: constitution of Court, challenge, swearing, arraignment, plea of guilty, not guilty, prosecution, defence, finding, procedure before sentence, sentence—POWER TO CONFIRM, REVISE, APPROVE—POWER AFTER CONFIRMATION — PROCEDURE ON CONFIRMATION, REVISION—GENERAL PROCEEDINGS OF COURT — GENERAL RULES AS TO WITNESSES—RECORD OF PROCEEDINGS: how taken, custody of, time preserved, loss of — FIELD GENERAL COURTS-MARTIAL, laws and rules relating to—SUMMARY COURTS-MARTIAL, laws and rules relating to—FORM FOR SUMMARY COURTS-MARTIAL, . 77

# CHAPTER V.

## GENERAL PROVISIONS AS TO COURTS-MARTIAL, EXECUTION OF SENTENCES, DESERTERS, &c.

APPOINTMENT AND DUTIES OF PRESIDENT—PROSECUTOR—JUDGE-ADVOCATE—JUDGE-ADVOCATE-GENERAL—POSITION OF COUNSEL AT COURT-MARTIAL—PROVOST-MARSHAL—EXECUTION OF SENTENCES—DESERTERS, ABSENTEES, apprehension of, confession of—PROVISION AS TO FINDING OF INSANITY—RESTITUTION OF STOLEN PROPERTY—CONVICTION OF OFFENCE OTHER THAN THE CHARGE PERMISSIBLE IN CERTAIN CASES—COPY OF PROCEEDINGS TO PRISONER—EXTENSION OF FURLOUGH IN CASES OF ILLNESS, . . . . . 139

# CHAPTER VI.

## EVIDENCE.

RULES OF EVIDENCE, as applied to courts-martial—WHAT MUST BE PROVED—BY WHICH SIDE PROOF MUST BE GIVEN—WHAT STATEMENTS ARE ADMISSIBLE—RULE OF RELEVANCY, evidence

as to character, evidence of conspirators—RULE OF BEST EVIDENCE : documents made evidence by the Army Act ; documents, primary, secondary ; circumstantial evidence—RULE OF HEARSAY—DEPOSITIONS—RULE OF OPINION—ADMISSIONS—CONFESSIONS—WITNESSES : competency of, examination of, privileges of, . . . . .	163
--	-----

## CHAPTER VII.

### *PAY—FORFEITURES—COURTS OTHER THAN COURTS-MARTIAL—ENLISTMENT.*

PAY, provisions by statute, by royal warrant—FORFEITURES : of pay, deferred pay, pension, medals, good-conduct badges—COURTS OF INQUIRY ON ILLEGAL ABSENCE—OTHER COURTS OF INQUIRY—BOARDS—ENLISTMENT, including terms of transfer and service, discharge, . . . . .	200
---	-----

## CHAPTER VIII.

### *GENERAL PROVISIONS.*

BILLETING AND IMPRESSMENT OF CARRIAGES, &c.—EXEMPTIONS OF OFFICERS AND SOLDIERS—COURTS OF REQUESTS—JURISDICTION—LEGAL PENALTIES APPLICABLE TO CIVILIANS—PERSONS SUBJECT TO MILITARY LAW—APPLICATION OF MILITARY LAW IN CERTAIN CASES—DEFINITIONS, . . . . .	231
---	-----

## CHAPTER IX.

### *SYNOPSIS OF PARTS OF: THE RESERVE FORCES ACT, 1882; THE MILITIA ACT, 1882; THE ARMY ACT, 1881.*

RESERVE : establishment of, calling out, punishment, training, deserters, absentees—MILITIA : embodiment, punishment of, desertion, fraudulent enlistment—SYNOPSIS OF PART OF THE ARMY ACT, . . . . .	258
---	-----

## APPENDICES.

I. FORMS OF CHARGES,	. . . . .	277
II. FORMS OF OATH, &c.,	. . . . .	288
III. EXAMINATION QUESTIONS,	. . . . .	291

---

*In the following pages, the parts which do not belong to the present course of reading for Lieutenants are distinguished by an asterisk in the margin at the beginning and end of each passage—the former on the left, the latter on the right.*

# A HANDY TEXT-BOOK

ON

## MILITARY LAW.

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### CHAPTER I.

#### INTRODUCTORY.

*Military Law* is the law which governs the soldier in peace and in war, at home and abroad. It is sometimes used in a narrower sense to mean *Statute Law*, in contradistinction to the *Law of Custom*.

Definition of  
military  
law.

The term *Customs of War* has been advisedly substituted for the expression *Martial Law*, formerly in use. The latter was indefinite, and was really a misnomer, being in point of fact no law at all, but, as defined by Wellington, "the will of the general in command." But although the will of a conqueror in a foreign country is supreme, still the practice of civilised

Customs of  
war, or mar-  
tial law.



nations has established certain rules, to which officers are bound to conform, and these rules have been called Customs of War.

The expressions Military Law and Martial Law were used synonymously in early times, the latter meaning, like the former, the law of the soldier. In late works on the subject, a distinction has been made between the terms, the former meaning the written statute law of the soldier, the latter expressing a state of things when the *real* law is in abeyance, as in a conquered country, a sudden emergency, &c. The term Martial Law, however, is still retained in the preamble of the Annual Army Act, taken originally from the Bill of Rights.

Law of riot.

Again, troops, when called out to assist the civil power in cases of riot and insurrection, are under military law as soldiers, but they are also as citizens subject to the ordinary civil law, as if they were not soldiers,—their military legal obligations being, in fact, in addition to their civil liabilities.

It appears, then, that besides the special law of the soldier—*i.e.*, military law—officers are also, as such, concerned to some extent in the law relating to riots and insurrections, and in the customs of war.

The two latter branches of law are not further

noticed here,<sup>1</sup> the subject-matter of this treatise being military law, or the special law of the soldier.

## MILITARY LAW.

Military law,<sup>2</sup> as it now stands, is contained in the Army Act, 1881; Rules of Procedure under the Army Act; Queen's Regulations, published by authority; Reserve Forces Act, 1882; and Militia Act, 1882; also in Army Circulars, Regulations, Royal Warrants, and Orders in Council. Military law, where contained.

The second edition of the Army Act, 1881, published in 1882, and as amended by the Army Annual Act, 1883, takes the place of the Army Discipline and Regulation Act of 1879, which latter Act was the first step to consolidate the law which formerly was contained in the Mutiny Act, Articles of War, and various other Acts. How continued in force.

## ARMY ANNUAL ACT.

The Army Act, 1881, is *continued in force only* by an Annual Act of Parliament, thus securing

<sup>1</sup> They are not included in the present syllabus: for further information on these branches, see 'Manual of Military Law,' published by authority.

<sup>2</sup> The expression "military law" is here used in a general sense: rules and regulations have not the same force as the Acts of Parliament. Rules and regulations are made by authority under the Acts.

the constitutional principle of the control of Parliament over the separate code necessary for maintenance of discipline in the army.

Army Annual Act  
(old Mutiny  
Act preamble).

The Army Annual Act commences with the old Mutiny Act preamble, taken almost word for word from the Bill of Rights.<sup>1</sup> It declares the *reason* for military legislation being *necessary*, and for allowing a standing army to exist at all.

1. It recites that, *though* the keeping of a standing army in the United Kingdom in time of peace without the consent of Parliament is illegal, yet her Majesty and the present Parliament consider, *for the safety of the United Kingdom, and the defence of her Majesty's possessions*, it is necessary that the army be continued; it then fixes the number of men for one year.

2. It further declares that, *though* it is illegal in time of peace, and within the realm, to punish any man by *martial law*,<sup>2</sup> or in any manner except by judgment of his peers, or according to law,

<sup>1</sup> Petition of Right, 3 Cha. I., c. i., 1627.

<sup>2</sup> Martial law, as distinguished from military law, is unknown to English jurisprudence, the terms being used synonymously, as already explained. Although proclamations of martial law have been made (1715, 1745, also riots of Lord Gordon, and Ireland 1798), they in no case proclaim a state of martial law against peaceful subjects, but merely justify the use of arms against rebels; and in all cases these proclamations seem to have been followed by Acts of Indemnity to exculpate those who in *good faith* have done *really lawless acts*.

*nevertheless* it being requisite to the *preserving an exact discipline* in the Army, and for the punishment of mutiny, sedition, desertion, and other crimes, it provides that offenders may be brought to a more *speedy* and *exemplary* punishment than the usual forms of law allow.

3. It also recites that a force of Royal Marines is necessary for the safety and defence of her Majesty's possessions; and that, as these marines may be employed on shore or on board ship, when they are not subject to naval law, special legislation is necessary for them.

Thus the preamble gives the number of men for one year, limits that number, and declares the reasons for allowing a different code of law for soldiers.

The Annual Act limits the time the Army Act shall be in force in different places: if promulgated in general orders anywhere out of the United Kingdom, it comes into force on the date of the order, but the date of its termination is specific. That date is, in the United Kingdom, Channel Islands, Isle of Man, 30th April; elsewhere in Europe, including Malta, also in the West Indies and America, 31st July; in other places, 31st Dec.

The Annual Act also settles prices in respect of billeting, and it can make any changes in the

law by amending the Army Act. The latter arrangement is a great advantage which military law enjoys over civil law, where statute is heaped upon statute ; whereas the single military statute (the Army Act) can be amended yearly by the Annual Act.

#### CLASSIFICATION OF THE ARMY ACT.

**A. A., sec.  
3.**  
Classifica-  
tion.

The Army Act is divided into five parts of subject-matter. There is, nevertheless, a sixth part, which deals with Commencement, Application, Repeal.

Part I. Discipline.

„ II. Enlistment.

„ III. Billeting and Impressment of Carriage.

„ IV. General Provisions.

„ V. Application of Military Law, Saving Provisions, Definitions.

## CHAPTER II.

### *CRIMES AND PUNISHMENTS.*

BEFORE enumerating the various crimes and punishments, a few preliminary remarks and definitions would seem useful.

Crime may be defined as “an act of disobedience to a law forbidden under pain of punishment.” Crime.

The essentials of a crime are—(1) *Will*; (2) *Criminal intention or malice*, the absence of either of which excludes the act from the category of crimes. Essentials  
of a crime.  
Will.  
Intention.

*Motive* must not be confounded with *intention*. Motive.  
Motive may be defined as “that which incites or stimulates to action.” It may serve as a clue to the intention, but it is the latter which determines the quality, criminal or innocent, of the act.

But to make a person a criminal, the intention must be a state of mind forbidden by law. This

Malice.

guilty state of mind, or criminal intention, is generally known by the term *Malice*—a term which is truly a legal enigma, on account of the many and conflicting senses in which it is used. To secure a conviction, as a general rule, malice of this kind must be directly proved; but when the law expressly declares an act to be criminal, the question of intention or malice need not be considered. Malice may be passive—for example, manslaughter in a surgeon who has shown gross incompetence in the treatment of the deceased; here the criminality consists in wilfully incurring the risk of causing suffering or loss to others. Thus the character of the intention determines whether an act is criminal or not; but a naked intention is not criminally punishable, except, it is said, treason. There must be some carrying out, or attempt to carry out, that intention into action. In other words, the intention is to be inferred from some overt act, or, in the case of a crime of omission, from the absence of some overt act.

#### SYSTEM OF GROUPING OFFENCES.

The principle adopted in the Army Act in classifying the offences is that of grouping together those of a similar character, and ranging

the various groups in a manner intended to impress the soldier with their relative importance. For instance, the first group is headed, *Offences in respect of military service*, the next *Mutiny and insubordination*, on the ground that misbehaviour in the field, mutiny and insubordination, are the gravest crimes which a soldier can commit.

System of  
arrange-  
ment

The general wording of most of the sections, and which need not be repeated in each case, is as follows:—

“Every person subject (or having become subject) to military law, who [*crime recited*] shall on conviction by court-martial be liable to [*punishment*], or such *less* punishment as is in this Act mentioned.”

It should be observed that the punishment named in each section is the *maximum* punishment for that offence, and that the court can give any *less* punishment. The maximum is only intended to be imposed when the offence committed is one of the worst of its class, and is committed by an habitual offender, or is committed under circumstances which require an example to be made.<sup>1</sup>

<sup>1</sup> Manual of Military Law.



*1st Group.*

## OFFENCES IN RESPECT OF MILITARY SERVICE.

A. A., sec.

4.

Offences in  
relation to  
the enemy  
punishable  
with death.

The following are punishable with DEATH, whether committed by officer or soldier:—

1. *Shamefully* abandoning or giving up, or compelling any person shamefully to abandon or give up, any place or guard which it was his duty to defend.

2. *Shamefully* casting away arms, ammunition, or tools, in presence of the enemy.

3. *Treacherously* holding correspondence with, or giving intelligence to, the enemy.

4. Assisting enemy with arms, ammunition, or supplies, or knowingly harbouring or protecting him.

5. Being a prisoner of war, voluntarily serving with or aiding the enemy.

6. Knowingly doing on active service any act calculated to imperil the success of any part of her Majesty's forces.

7. Misbehaving, or inducing others to misbehave, before the enemy in such a manner as to show cowardice.

*Note to sec. 4.*—The word "tools" is new since 1879. The spade being a most necessary article to the soldier in modern war, casting away tools is made a serious crime. *Treacherously* holding correspondence is punishable with death, while *without due authority* (sec. 5 (4)) holding correspondence is only liable

to penal servitude. (5) and (6) are new since 1879 : example of (6)—injuring rifles ; spiking guns. Misbehaving formerly meant cowardice ; the words “in such a manner as to show cowardice” are now added.

The following are punishable with PENAL SERVITUDE, if committed ON ACTIVE SERVICE by officer or soldier :—

**A. A., sec. 5.**  
Offences in relation to the enemy, not punishable with death, but with penal servitude.

1. Leaving ranks without orders on pretence of taking wounded to the rear, or to secure prisoners or horses.

2. Wilfully damaging any property without orders.

3. Being taken prisoner by want of due precaution, wilful neglect of duty, or disobedience of orders ; or being a prisoner, failing to rejoin when able.

4. *Without due authority* holding correspondence with, giving intelligence to, or sending a flag of truce to, the enemy.

5. In any manner spreading reports calculated to create unnecessary alarm or despondency.

6. In action, or previous to going into action, using words calculated to create unnecessary alarm or despondency.

*Note to sec. 5.*—“Being prisoner and failing to rejoin when able” is new since 1879.

For the following offences an officer or soldier is liable to DEATH if committed ON ACTIVE SERVICE

**A. A., sec. 6.**  
Offences

punishable  
more severely  
on active  
service than  
at other  
times.

VICE; if committed not on active service, an officer is liable to be CASHIERED, a soldier to IMPRISONMENT:—

1. Leaving commanding officer to go in search of plunder.

2. Without orders from superior officer leaving guard, picket, patrol, or post.

3. Forcing a safeguard.

4. Forcing or striking a soldier acting as sentinel.

5. Impeding the provost-marshal or other person legally exercising authority under him, or, when called on, refusing to assist the provost-marshal or such other person in the execution of his duty.

6. Doing violence to any conveyer of provisions to the forces, or committing any offence against the property or person of any inhabitant of the country in which he is serving.

7. Breaking into any house in search of plunder.

8. By any means whatever, *intentionally* occasioning false alarms in action or elsewhere.

9. *Treacherously* making known the watchword to any person not entitled to receive it, or *treacherously* giving a watchword different from what he received.

10. Irregularly detaining or appropriating to his own corps provisions contrary to order.

## 11. A sentinel—

(a) Sleeping or being drunk on post.

(b) Leaving post before regularly relieved.

The two following offences, although classed under the above heading—viz., *offences punishable more severely on active service than at other times*—have, nevertheless, only one penalty attached. (It is not clear why they are placed in this section. It may also be noticed that this section does not include *all* the crimes which are punishable more severely on active service than at other times.) These two crimes are—

12. By any means whatever *negligently* occasioning false alarms in action or elsewhere (see sub-sec. 8).

13. Making known the watchword to any person not entitled to receive it, or, *without good cause*, giving a watchword different from what he received (see sub-sec. 9).

The penalty attached is CASHIERING for an officer, and IMPRISONMENT for a soldier.

*Note to sec. 6.*—"Forcing or striking a sentry" was new in 1879. "Forcing a safeguard."—A safeguard is a guard to persons or property granted by a general commanding, and guaranteed by the presence of one or more officers or soldiers allotted for that purpose. A violation of a safeguard, therefore, concerns the general's honour, and must not be confounded with forcing a sentry. Comparing 8 and 9 with 12 and 13, we find that by substituting the word "negligently" for "intentionally" in the one case, and omitting the word

*treacherously*, and substituting *without good cause* in the other, the offences become of a less grave nature, and are only liable to the lesser penalty. But the offences under 12 and 13 are not more severely punishable on active service than at other times. For definition of active service, see chap. viii., Definitions.

Q. R., sec.  
vi. p. 76.

A charge against a non-commissioned officer absenting himself from his post without authority when on gate duty, should be charged under sub-sec. 2.

### *2d Group.*

Having dealt with offences in respect of military service, the next group of crimes in order of gravity is headed—

## MUTINY AND INSUBORDINATION.

A. A., sec.  
7.  
Mutiny and  
sedition.

The following offences are punishable by DEATH wherever committed, either by officer or soldier.

1. Causing, or conspiring with other persons to cause, mutiny or sedition in any of her Majesty's forces or navy.

2. Endeavouring to seduce persons in her Majesty's forces or navy from allegiance to her Majesty, or persuading any person to join in mutiny or sedition.

3. Joining in, or being present not using his utmost endeavours to suppress, any mutiny or sedition in her Majesty's forces or navy.

4. Coming to the knowledge of any actual or intended mutiny or sedition in her Majesty's

forces or navy, and not having without delay informed his commanding officer.

*Note to sec. 7.*—The reserve, auxiliary forces, and navy, are now included.

*Mutiny* may be described as the act of *two or more* soldiers who join together in resistance to, or disobedience of, lawful authority. It implies collective insubordination.

*Sedition* may be taken as meaning a proceeding falling short of actual mutiny in respect of direct resistance or disobedience, but of a mutinous tendency. It is the same crime as in civil law, see p. 34.

The offence of striking, using or offering any violence to a superior officer being IN THE EXECUTION OF HIS OFFICE, is punishable with DEATH everywhere;<sup>1</sup> and the offence of striking, using or offering any violence to a superior officer, or using threatening or insubordinate language to a superior officer, is punishable, if ON ACTIVE SERVICE, by PENAL SERVITUDE; if not on active service, by CASHIERING in the case of an officer, and IMPRISONMENT in case of a soldier.

A. A., sec. 8.

Striking or threatening a superior officer.

*Note to sec. 8.*—A non-commissioned officer is always supposed to be in the execution of his office.

Disobeying in such manner as to show a *wilful defiance of authority* any lawful command given *personally* by his superior officer in the

A. A., sec. 9.

Disobedience to superior officer.

<sup>1</sup> When not otherwise specified, the punishment applies to both officer and soldier, as already mentioned, "every person subject to military law," p. 9, above. In some cases, however, the offence can only be committed by an officer, or by a non-commissioned officer, or by a soldier (examples, sec. 10 (4), sec. 24, sec. 15 (3), sec. 16, sec. 37). See also p. 58.

*execution of his office*, whether such command be given orally, or in writing, or by signal, or otherwise, is punishable with DEATH everywhere.

Disobeying the lawful command of a superior officer is punishable, if ON ACTIVE SERVICE, by PENAL SERVITUDE; if not on active service, by CASHIERING for an officer, and IMPRISONMENT for a soldier.

*Note to sec. 9.*—An offence of this class may be of the most trivial description, or may be most serious. Charges should be therefore framed in such manner as to discriminate more accurately than heretofore. The essential ingredients of the graver offence are, that it should show a *wilful defiance of authority*, and must be disobedience of a *lawful command*, given *personally* by a superior officer in the execution of his office. Each of these particulars must be proved before the prisoner can be convicted of the more serious offence.

*Lawful command* is difficult to define. Simmons says: "So long as the orders are not pointedly and decidedly contrary to the known laws of the land, or custom of the service, or, if in opposition to these laws, the acts do not tend to an irreparable result, they are lawful, and must be unhesitatingly obeyed."

A. A., sec.  
10.  
Insubordi-  
nation.

For the following crimes the offender is liable, if an officer, to CASHIERING; if a soldier, to IMPRISONMENT:—

1. Being concerned in any quarrel, refusing to obey an officer, though of inferior rank, who orders him into arrest; or striking, using, or offering violence to such officer.

2. Striking or using violence to any person in

whose custody he is placed, whether the person is or is not subject to military law, or is or is not his superior officer.

3. Resisting an escort whose duty it is to apprehend him.

4. Breaking out of barracks, camp, or quarters.

*Note.*—(2), (3), and (4) were new in 1879. It was thought right that these crimes should be specified instead of being tried as formerly under sec. 40 (a generally inclusive section). It will be observed that a charge may be made under sub-sec. (2) for assaulting a constable, but the same charge could be made under sec. 41, simply “committing a civil offence, that is to say, assault.” See Appendix I.

For neglect to obey garrison or other orders, **A. A., sec. 11.**  
the penalty is CASHIERING for an officer, IMPRISONMENT for soldier. The expression “orders” Neglect to obey orders.  
does not include her Majesty’s regulations for general information and guidance.

### *3d Group.*

#### DESERTION. FRAUDULENT ENLISTMENT.

##### ABSENCE WITHOUT LEAVE.

#### *Desertion.*

Desertion, attempting to desert, persuading, **A. A., sec. 12**  
endeavouring to persuade, procuring, or attempt- Desertion.  
ing to procure, any person to desert from her Majesty’s service, is punishable by DEATH if com-



mitted ON ACTIVE SERVICE, OR UNDER ORDERS for active service.

If not on active service, the penalty is IMPRISONMENT for the first offence, and PENAL SERVITUDE for the second or subsequent.

*Note to sec. 12.*—To constitute desertion there must be an *intention* either not to return to her Majesty's service at all, or to evade some particular service, and an absentee must not be tried, nor convicted of desertion, unless the officer charging him, or the court, are satisfied that desertion as above defined has been committed. In cases of doubt, a court should find guilty of absence without leave. In judging of the *intention*, which is the criterion between mere absence without leave and desertion, time is of little value as a test: for instance, a man who had only been absent one hour, might be tried for desertion if arrested on a ship starting for Australia; while, on the other hand, a soldier might be a long time absent, and yet always intend to return.

A soldier who absents himself in order to shirk some particular service, though he may intend to return when the duty is over, can also be tried for desertion; for instance, a man on the eve of embarkation for foreign service. The fact of a soldier surrendering is not proof that he always intended to return; he might surrender because he could not escape. For desertion of militiamen, see Militia Act, sec. 23, p. 268.

### *Fraudulent Enlistment.*

A. A., sec.  
13.  
Fraudulent  
enlistment.

The crime of fraudulent enlistment consists in—

When belonging to the regular forces, or militia when embodied, without having first obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist, enlisting in the regular forces; or—

When belonging to the regular forces, without having fulfilled the conditions enabling him to enlist or enter, enlisting or entering the militia, or any of the reserve forces not subject to military law, or entering the royal navy.

The punishment for the first offence is IMPRISONMENT, for SECOND or subsequent offence, PENAL SERVITUDE.

If an offender has fraudulently enlisted once or oftener, he may, for the purposes of trial for desertion or fraudulent enlistment, be deemed to belong to any one or more of the corps to which he has been appointed, as well as to the corps to which he properly belongs, and he may be charged with any number of offences of desertion or fraudulent enlistment at the same time.

A conviction of two cases by the same court-martial entails the higher penalty, as well as a conviction by a previous court.

Further, on a charge of desertion, a previous conviction of fraudulent enlistment will count, and admit of a sentence of penal servitude; also, on a trial for fraudulent enlistment, a previous conviction of desertion will entail the higher penalty; but the absence next before the enlistment, which is the subject of the charge, cannot be reckoned as a previous case of desertion.

*Note to sec. 13.*—As a general rule, a soldier quitting one

regiment and enlisting in another should not be charged with desertion, but with fraudulent enlistment, for the very fact of his again enlisting shows that (at that time at any rate) he did not intend to leave her Majesty's service.

The term fraudulent enlistment is not now used as formerly in a general sense, to express any unlawful entry into the service. The term is restricted to the offence as defined in sec. 13 Army Act, and as regards militia, in sec. 26 Militia Act. Fraudulent enlistment under section 13 shortly—

{ Regular soldier or em- bodied militiaman	{ fraudulently entering	{ regulars.
{ Regular soldier	{ fraudulently entering	{ militia, reserve, navy.

For fraudulent enlistment of men of auxiliary and reserve forces, see Militia Act, 1883, p. 269.

### *Assisting to Desert.*

**A. A., sec.  
14.**

Connivance  
at desertion.

For assisting to desert, or knowing of an intention to desert, and not informing his commanding officer, an offender is liable to IMPRISONMENT.

### *Absence without Leave.*

**A. A., sec.  
15.**

Absence  
without  
leave.

The penalty for the following crimes is for officer CASHIERING, soldier IMPRISONMENT:—

1. Absence without leave.
2. Absence from parade or rendezvous, or quitting parade without leave, or quitting the ranks without urgent necessity.
3. Being without leave out of fixed bounds.
4. Absence from school.

*4th Group.*

## DISGRACEFUL CONDUCT.

*Officer.*

This is the only peremptory penalty in the Act. It is laid down that an officer convicted of the following crime *shall* be CASHIERED—viz., behaving in a scandalous manner, unbecoming the character of an officer and gentleman (a charge of a very wide and vague character).

**A. A., sec. 16.**  
Scandalous  
conduct of  
officer.

*Fraud by Persons in Charge.*

This offence is punishable by PENAL SERVITUDE. The offender must be charged with or concerned in the care or distribution of public or regimental money or goods. The offence is stealing,<sup>1</sup> fraudulently misapplying, or embezzling,<sup>1</sup> or for being concerned in or conniving at the same.

**A. A., sec. 17.**  
Fraud by  
persons in  
charge of  
money or  
goods.

*Disgraceful Conduct of Soldier.*

Disgraceful conduct in a soldier is punishable with IMPRISONMENT.

It consists of—

1. Malingering, feigning, or producing illness.
2. Wilfully maiming self or other soldier, with intent to render unfit for service.

**A. A., sec. 18.**  
Disgraceful  
conduct of  
soldier.

<sup>1</sup> See p. 33 for definitions of stealing, embezzling.

3. Misconduct, by which he produces or aggravates disease.

4. Stealing or embezzling<sup>1</sup> money or goods, the property of an officer or comrade, or belonging to a regiment or to the public, or receiving such, knowing them to be stolen or embezzled.

5. Any other offence of a fraudulent nature, not before specified in the Act, or *disgraceful conduct* of a cruel, indecent, or unnatural kind.

*Note to sec. 18.*—Although the offences specified in these five sub-sections are known as disgraceful conduct of soldier, a charge under sub-sec. (5) is the only one in which the words “disgraceful conduct” would appear, since words in italics in headings or margin do not form part of the Act (see Army Act, sec. 18, also Appendix I. Forms of Charges).

*Malingering* means a feigning of illness for the purpose of evading military duty. Feigning disease would be a preferable charge, because it discloses an offence though the pretence was not made for the purpose of evading duty, which might be difficult to prove. A man is not liable to trial under this section who, from voluntary acts, involuntarily produces disease. “Produces” implies an act done with the deliberate intention of producing disease.

### 5th Group.

#### DRUNKENNESS.

A. A., sec.  
19.  
Drunken-  
ness.

Drunkenness, whether on duty or not on duty, is punishable in the case of an officer by CASHIERING, in the case of a soldier by IMPRISONMENT, and, in addition or substitution, a FINE OF £1.

<sup>1</sup> See p. 33 for definitions of stealing, embezzling.

*Note to sec. 19.*—Until recently an officer could only be tried for drunkenness on duty; if drunk not on duty he could formerly be tried for “scandalous conduct,” now he can be tried for a simple case of drunkenness like a private soldier.

A man is on duty on the line of march at all times, but this section of the Act makes no difference between the offences of simple drunkenness and drunkenness on duty. This is modified by sec. 46.

### *6th Group.*

#### OFFENCES IN RELATION TO PRISONERS.

When in command of a guard, picket, patrol, **A. A., sec. 20.**  
or post, releasing without proper authority any **Permitting escape of prisoners.**  
prisoner committed to his charge, or allowing  
any prisoner to escape who is committed to his  
charge, or whom it is his duty to guard.

If done WILFULLY the penalty is PENAL SERVITUDE, if done otherwise, IMPRISONMENT.

*Note to sec. 20.*—The increased penalty in this section of penal servitude is new since 1879.

The penalty for the following crimes is CASHIER- **A. A., sec. 21.**  
ING for officer, IMPRISONMENT for soldier:—

Unnecessarily detaining a prisoner in custody;  
or having committed a person to custody, failing  
to deliver within twenty-four hours an account  
of the crime in writing to the custodian; or be-  
ing in command of a guard, failing to deliver

**Irregular imprisonment.**

prisoner's name and offence, so far as is known, within twenty-four hours to the officer to whom he reports.

**A. A., sec. 23.** Escaping from arrest or confinement (arrest or confinement includes all kinds of lawful custody).  
**Escaping from confinement.**

*7th Group.*

OFFENCES IN RELATION TO PROPERTY.

**A. A., sec. 23.** Conniving at the exaction of exorbitant prices for horses, or stalls to sutlers, or taking any fee, or being in any way interested in the sale of provisions or merchandise brought into any place in which the offender has any authority, is punishable with IMPRISONMENT.  
**Corrupt dealing in respect of supplies.**

**A. A., sec. 24.** Loss or deficiency of, or injury to, arms, ammunition, equipment, instruments, clothing, or necessities; selling, ill-treating, making away with, or injuring horse, is punished with IMPRISONMENT, also wilfully injuring any public or regimental property. The section only applies to soldiers.  
**Deficiency and injury to equipment.**

*Note to sec. 24.*—A charge of "making away with" should be preferred only when proof is forthcoming that the prisoner actually sold or otherwise disposed of his kit by some positive act. "Losing by neglect" would be the usual charge.

*8th Group.*OFFENCES IN RELATION TO FALSE DOCUMENTS  
AND STATEMENTS.

Falsifying official documents and false declarations. Punishment, IMPRISONMENT. **A. A., sec. 25.**

Neglect to report, and signing in blank. Punishment, CASHIERING for officer, and IMPRISONMENT for soldier. **A. A., sec. 26.**

False statement or false accusation by soldier or officer. Punishment, IMPRISONMENT. **A. A., sec. 27.**

*Note.*—Most of 27 was new in 1879 ; for details of 25, 26, 27, see Army Act. See also Appendix I. Forms of Charges.

*9th Group.*

## OFFENCES IN RELATION TO COURTS-MARTIAL.

The following offences are punishable, in case of officer with CASHIERING ; soldier, IMPRISONMENT ; but only by a court-martial other than that concerned :—

1. Military witness summoned or ordered failing to attend.
2. Refusing to take oath or declaration.
3. Refusing to produce a document legally required.



4. Refusing, when a witness, to answer a question legally requiring an answer.

5. Contempt of court.<sup>1</sup>

In the last case the court has power, instead of trying the offender by another court, to commit him by order of the president to imprisonment not exceeding twenty-one days.

*Note to sec. 28.* — But such order must be read as a sentence, and must therefore commence (sec. 68) on the date of the order. If the court awarded sentence, in respect of the offence under trial, of twenty-one days or more, the two awards of imprisonment would be concurrent, and that for contempt would therefore be inoperative. To avoid this, it is suggested (O'Dowd) that, on the president signing the order, the court might adjourn until the date at which the imprisonment expires, and then resume the trial; or, if that course be inconvenient, they might conclude the proceedings, except the sentence, make the award for contempt, and then adjourn, re-assembling for the considering their sentence for the offence under trial.

**A. A., sec.  
29.**

False evidence.

Wilfully giving false evidence when examined on oath or declaration before any court, or officer authorised to administer an oath, is punishable by IMPRISONMENT.

### *10th Group.*

#### OFFENCES IN RELATION TO BILLETING.<sup>2</sup>

**A. A., sec.  
30.**

Offences in relation to billeting.

Punishment—officer, CASHIERING; soldier, IMPRISONMENT.

<sup>1</sup> Means: contempt by using threatening or insubordinate language, or causing disturbance or interruption.

<sup>2</sup> Offences relating to billeting and impressment can also be

Shortly, these offences are—ill-treatment of occupier of house where billeted; officer refusing to cause compensation for the same; failing to meet the just demands of occupiers; wilfully demanding billets not required, or taking, or conniving at taking, any consideration to relieve any person from liability as to billeting; offering menace to constable, to make him give billets contrary to the Army Act, or to discourage him from doing his duty; offering compulsion on any person tending to oblige him to receive any person or horse not duly billeted.

### 11th Group.

#### OFFENCES IN RELATION TO IMPRESSMENT.<sup>1</sup>

Punishment—officer, CASHIERING; soldier, IMPRISONMENT. A. A., sec. 31.

Wilfully demanding *carriages, animals, or vessels* not required for authorised purposes; or forcing the same to travel against the will of person in charge beyond the proper distance; or to carry a greater weight than authorised; or not discharging the same as soon as practicable; or forcing the same from the owner; or failing to

Offences in relation to impressment of carriages, &c

punished by civil court. Army Act, secs. 111 and 118. See pp. 232, 233, chap. viii.

<sup>1</sup> See previous footnote.

comply with the Act as regards payment and weights; compelling any person to take any baggage not entitled to be carried, or to carry any person except under a requisition of emergency, or sick persons; ill-treating or permitting ill-treatment of any person in charge, or offering violence to a constable.

### 12th Group.

#### OFFENCES IN RELATION TO ENLISTMENT.

**A. A., sec.  
32.**

Enlistment  
after dis-  
charge with  
disgrace.

Having been discharged with *disgrace* from any part of her Majesty's forces, or dismissed with disgrace from the navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge or dismissal.

#### Punishment—PENAL SERVITUDE.

*Note to sec. 32.*—"Discharged with disgrace" here includes discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction of felony, or of a sentence of penal servitude.

**A. A., sec.  
33.**

False answer  
on enlist-  
ment.

A person who, having become subject to military law, is discovered to have wilfully made a false answer to any question in the attestation paper, which has been put to him by direction of a justice, is liable to IMPRISONMENT.

**A. A., sec.  
34.**

General of-

Enlisting for the regular forces any man not authorised to be enlisted, or wilfully contraven-

ing any enactments or regulations relating to enlistment or attestation, is punishable with IMPRISONMENT.

fences in relation to enlistment.

### *13th Group.*

#### MISCELLANEOUS MILITARY OFFENCES.

The punishment for all the offences under this heading is CASHIERING for an officer, IMPRISONMENT for a soldier.

Using traitorous or disloyal words regarding the Sovereign.

**A. A., sec. 35.**

Traitorous words.

Whether serving with her Majesty's forces or not, without due authority in any way disclosing the numbers or position of any forces, or magazines, or stores, or any preparations for, or orders relating to operations, in such manner as to produce effects injurious to her Majesty's service.

**A. A., sec. 36.**

Injurious disclosures.

*Note*—This clause specially relates to newspaper correspondents, who are now subject to military law when with troops: it also applies to every one present with an army, if subject to military law. See chap. viii. p. 243.

An officer or non-commissioned officer striking or ill-treating a soldier, or unlawfully detaining his pay when due. (A soldier cannot be tried

**A. A., sec. 37.**

Ill-treating a soldier.

under this section ; but for striking another soldier he can, under sec. 41 (5)—viz., assault.)

**A. A., sec.  
38.**

Duelling or  
attempting  
suicide.

Fighting, promoting, or conniving at a duel, or attempting to commit suicide.

(A fight otherwise than with deadly weapons is not a duel.)

**A. A., sec.  
39.**

Refusing to  
deliver of-  
fender to  
civil power.

Neglecting or refusing, on application being made, to deliver over to civil power, or to assist in apprehending any officer or soldier accused of a civil offence.

**A. A., sec.  
40.**

Conduct to  
the preju-  
dice of mili-  
tary disci-  
pline.

An act, conduct, or neglect to the prejudice of good order and military discipline.

*Note.*—This offence is of a very comprehensive character ; and before framing a charge under this section it should be carefully considered whether the “conduct, &c.,” is really and substantially to the prejudice of good order and military discipline. It does not include offences of a *non-military* character.

No person is to be charged under this section for any offence for which special provision is made elsewhere in the Army Act, and which is not a civil offence.

If so charged, however, the proceedings are not thereby invalid, unless injustice has been done.

If there is any doubt whether the offence is, or is not, a specific crime under another section, the prisoner may be charged under both (alternative charges) ; but of course the court must acquit on one.

## 14th Group.

## OFFENCES PUNISHABLE BY ORDINARY LAW.

Formerly the law regarding these crimes was complicated. The act now gives *absolute jurisdiction* to a court-martial to try *any* civil offence; with the important exception that it cannot try treason, murder, manslaughter, treason-felony, or rape, unless the offence was committed out of her Majesty's dominions, or at Gibraltar, or (even if committed within her Majesty's dominions) if on active service, or more than 100 miles from a civil court.<sup>1</sup>

A. A., sec.  
41.  
Civil crimes.

For treason and murder a court-martial can sentence to DEATH; manslaughter, treason-felony, or rape, PENAL SERVITUDE; for any other offence not specified in the Act, but punishable by the law of England, a court-martial can sentence a prisoner to IMPRISONMENT up to two years, or to any punishment assigned for such offence by the law of England.

*Note to sec. 41 (a).*—Although courts-martial have jurisdiction to try all civil offences, with the exceptions named, these

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<sup>1</sup> Persons cannot be tried for murder, treason, manslaughter, treason-felony, or rape by court-martial in the United Kingdom. This is not mentioned in the text, because the expression "100 miles from a civil court" seems to render that unnecessary.

would, as a rule, be tried by civil court. Stealing from a comrade is an exception. The restrictions here mentioned as to trying certain civil offences do not apply to a field general court-martial, which can try any civil offence which otherwise can come under its jurisdiction. Army Act, sec. 49, chap. iv. p. 127.

Treason.

*Note to sec. 41 (b).—Treason* may be said to comprise acts of violence against the Sovereign; acts of treachery against the State in favour of an enemy; acts of violence against the internal government of the country.

Murder.

*Murder*, the unlawfully killing another with malice aforethought, either express or implied.

Manslaughter.

*Manslaughter*, the unlawful killing another without malice aforethought.

Treason-felony.

*Treason-felony*.—Certain offences which had been declared treason by statute were, by a later statute, made felonies; hence the name. These are—Compassing, &c., to deprive or depose the Sovereign from the Crown; to levy war against the Sovereign to compel her to change measures, or to force or intimidate Parliament; to move any foreigner with force to invade her Majesty's dominions.

Felony—misdemeanour.

*Felony—Misdemeanour*.—The same act cannot be both a felony and a misdemeanour. Although, as a rule, the more serious crimes are felonies, the distinction is not founded on the degree of enormity of the crime, but rather on the consequences of each. *Felony* is derived from two words, one signifying fief or feud, the other price or value. Thus, if we go back to feudal times, we find the origin of the term: it applied to offences which in the tenant involved loss of his land to the lord of the fee. Blackstone thus defines felony: "An offence which occasions a total *forfeiture* of either lands or goods, or both, at common law, and to which capital punishment may be superadded, according to the degree of guilt." It may be noticed that where a statute declares that an offender against its provisions shall be deemed to have *feloniously* committed the act, the offence is thereby made a felony.

*Misdemeanour* is applied to indictable crimes not falling within the class of felonies.

Legislation (in 1870) attempted to remove the distinction between felony and misdemeanour, by doing away with all *forfeitures* as result of conviction of felony; but the terms,

having become firmly attached to the various offences, still remain.

Although forfeiture on conviction of felony is a thing of the past, there are minor points which distinguish felonies from misdemeanours; an arrest is justifiable in certain cases of supposed felony, where it would not be in cases of supposed misdemeanours; the latter may be tried on information, felonies only upon indictment or inquisition; right of peremptory challenge is confined to those charged with felony; previous conviction of felony entails severer penalty than the same of misdemeanour.

The principal felonies made so by statute are—murder, manslaughter, attempt to murder, wounding with intent to do bodily harm, theft, burglary, housebreaking, rape, arson, forgery.

The chief misdemeanours—libel, conspiracy, nuisance.

*Perjury* is the crime committed by one who, when a lawful oath or authorised declaration is administered to him in some proceeding in a court of competent jurisdiction, swears *wilfully, absolutely, and falsely* in a matter material to the issue. Perjury is a misdemeanour. Perjury.

The statement must be wilful, and not due to any mistake, surprise, or inadvertency; immaterial statements, though false, are not triable for perjury. See also pp. 182 and 189.

*Theft or Larceny*.—The wilfully wrongful taking *possession* of the goods of another, with intent to deprive the owner of his *property* in them. Theft or larceny.

Distinction between *Larceny and Embezzlement*. The gist of the latter offence is that, in the case of appropriation by an employee of money or goods received by him for his master, such money or goods are not, at the time of appropriation, in the actual possession of the employer.

In *Robbery* there must have been a feloniously taking from the *person* of another, or in his presence, against his will, accompanied either by *violence* or a *putting to fear*. Robbery.

*Forgery* is the false making, altering, or adding to any writing or document, with intent to defraud. Forgery.

*Burglary*.—The breaking and entering of the dwelling-house of another in the night-time, with intent to commit a felony. Night, settled by statute, means from nine o'clock in the evening till six o'clock following morning. Burglary.



Housebreak-  
ing.  
Arson.

*Housebreaking* is the same crime committed by day.

*Arson* is the wilful and malicious setting fire to any building.

Sedition.

*Sedition* embraces all practices which are calculated to disturb the tranquillity of the State, by stirring up opposition to the Government, exciting discontent, or bringing the administration of justice into contempt.

A. A., sec.  
155.

An officer is liable to be DISMISSED the service, if tried and convicted by court-martial for trafficking in commissions.

#### REDRESS OF WRONGS.

*Appears under this heading (Crimes and Punishments)  
in the Army Act.*

A. A., sec.  
42.  
Complaint  
by officer.

An officer thinking himself wronged by his commanding officer, and not receiving the redress to which he may consider himself entitled, may complain to the Commander-in-Chief in order to obtain justice, who is required to examine, and to report to her Majesty.

A. A., sec.  
43.  
Complaint  
by soldier.

A soldier has now a general right of complaint in respect of any matter in which he may think himself wronged. He can complain to his captain against inferior officer, to his commanding officer against his captain, and to the officer commanding district or station against his commanding officer; and these officers appealed to are bound to inquire into the matter, and if satisfied of the justice of the complaint, to give full redress.

A soldier is not now, as formerly, punishable

for making a *frivolous complaint*, but a *false accusation* can be punished under sec. 27.

#### PROVISIONS AS TO PUNISHMENTS AND SCALE.

The Army Act, sec. 44, lays down a scale of punishments, in the order of their severity, first applicable to officers, then to soldiers. Several provisions follow, explanatory of the scale.

A. A., sec.  
44.  
Scale of  
punishment  
by court-  
martial.

It has already been mentioned<sup>1</sup> that the principle adopted in the Act is to affix to each offence a maximum punishment, instead of, as under the former law, "such punishment as a general, district, or regimental (as the case may be) court-martial may award." And the court is generally empowered to give any less punishment than the one named.

On reference to the scale below, it will be observed that there is a great gap seemingly between the maximum term of imprisonment—two years—and the next greater punishment, which is five years' penal servitude.

It has been maintained, in explanation of this apparent anomaly, that there is practically no such gap—that, in fact, in many cases two years' imprisonment is a more severe sentence than five years' penal servitude. This, however, is disputed on high authority, also by persons who

<sup>1</sup> See p. 9.

have undergone punishment;<sup>1</sup> and it would seem a matter of regret that the law does not sanction, as it formerly did, sentences of three and four years' penal servitude. For further remarks on this subject, see the preface.

*Scale of Punishments.*

*Officers.*

A. A., sec.

44.

Scale  
(officers).

- a. Death.
- b. Penal servitude—not less than five years.
- c. Imprisonment with or without hard labour—not exceeding two years.
- d. Cashiering.<sup>2</sup>
- e. Dismissal from her Majesty's service
- f. Forfeiture of seniority of rank in army, or corps, or both.
- g. Reprimand, or severe reprimand.

(Soldiers.)

*Soldiers.*

- h. Death.
- i. Penal servitude—same as officers.
- k. Imprisonment—same as officers.
- l. Discharge with ignominy.

<sup>1</sup> See "The Duration of Penal Servitude," by Sir E. F. Du Cane, K.C.B., Inspector-General Military Prison Department, Fortnightly Review, June 1883. Also, Eighteen Months' Imprisonment, by D— S—, late captain — Regiment.

<sup>2</sup> Cashiering is considered a more severe punishment than dismissal. The former is held to incapacitate the person sentenced from ever again serving the crown in any capacity—Simmons.

*m.* Reduction of non-commissioned officer to lower grade, or to ranks.<sup>1</sup>

*n.* Forfeitures, fines, stoppages.

Any one punishment lower in the scale than the one specified in the Act for any offence may be given. A. A., sec. 44.  
Provisions.

An officer must be sentenced to cashiering before he is sentenced to imprisonment or penal servitude.

An officer, when sentenced to forfeiture of rank, may *also* be sentenced to reprimand.

A soldier sentenced to penal servitude or imprisonment may, *in addition*, be sentenced to discharge with ignominy.

In addition to any other punishment, offenders may be sentenced to forfeiture of deferred pay, service towards pension, military decorations or rewards, in such manner as Royal Warrant prescribes,<sup>2</sup> or to any deduction of ordinary pay authorised by the Army Act.

Summary punishment<sup>3</sup> can be given by any court-martial on active service for offences of aggravated drunkenness, disgraceful conduct, or for any offence punishable by death or penal servi-

<sup>1</sup> A non-commissioned officer can only be reduced to or from a legal rank ; care must therefore be made in wording sentences. For definition of rank and appointment, see Queen's Regulations, sec. vii. par. 112.

<sup>2</sup> See p. 202.

<sup>3</sup> See note, chap. iii. p. 69.

tude, but cannot be inflicted when imprisonment can be carried out.

Summary punishment is to consist of punishment directed by rules of Secretary of State.<sup>1</sup> But it is not to be flogging, or of a nature to injure life or limb, nor can it be inflicted on a non-commissioned officer, or a reduced non-commissioned officer for an offence committed whilst he was a non-commissioned officer.

An aggravated case of drunkenness means drunk on duty, on march, or when warned for duty, or when, by reason of drunkenness, the offender was found unfit for duty. Commanding officer is not obliged to deal summarily with a case of aggravated drunkenness.

Disgraceful conduct means offences specified in Army Act, sec. 18.<sup>2</sup>

Rules of summary punishment are to be laid before Parliament.

For purpose of commutation of punishment, summary punishment stands next below penal servitude in scale.

*Rules for Summary Punishment by Court-Martial,  
made by Secretary of State, July 1881.*

Summary punishment is not to exceed three months, and consists of—

<sup>1</sup> See below.

<sup>2</sup> See p. 21.

(a) Field imprisonment No. I., or

(b) Field imprisonment No. II.

In field imprisonment No. I. prisoner may be kept in irons, straps, or ropes, and secured so as to prevent his escape.

When in irons he may be attached to a fixed object in such a manner that he must remain in a fixed position, for a period not exceeding two hours in one day ; but he must not be so attached for more than twenty-one days in all, nor for more than three out of any four days.<sup>1</sup> He may be dealt with as if he were under sentence of imprisonment with hard labour.

Field imprisonment No. II. is the same as field imprisonment No. I., except that the offender cannot be attached in a fixed position.

Summary punishment must be so inflicted as not to leave permanent mark, or cause injury, and must be discontinued on report of medical officer that continuance would be prejudicial to offender's health.

A short recapitulation of the different crimes, arranged according to their punishments, may be useful here.

<sup>1</sup> Summary punishment was not inflicted during the active operations in Egypt, 1882 ; but with a view to doing so, stocks were made by the Royal Engineer department, by order of the general commanding.

## SUMMARY OF CRIMES AND PUNISHMENTS.

## CRIMES PUNISHABLE WITH DEATH.

(a) *At Any Time, or Place.*A. A.,  
sec. 7.

,, 8.

,, 9.

1. Mutiny or sedition.

2. Violence to a superior officer in execution of his office.

3. Disobeying the lawful command given personally by superior officer in the execution of his office.

(b) *On Active Service, at Gibraltar, or more than 100 miles from a Civil Court.*<sup>1</sup>

,, 41.

,, 41.

4. Murder.

5. Treason.

(c) *On Active Service only.*<sup>2</sup>

,, 4.

6. Shamefully abandoning a post.

7. Shamefully casting away arms, &amp;c.

8. Treacherously holding correspondence with enemy.

9. Assisting or harbouring enemy.

10. Aiding enemy when prisoner of war.

11. Knowingly committing any act imperilling success.

12. Cowardice.

<sup>1</sup> See note, p. 31.<sup>2</sup> The crimes specified under sec. 4 are liable to the death penalty not only on active service, but generally "in relation to the enemy." It will be seen by reading them in detail (p. 10) that they necessarily relate to the enemy.

- |  |   |                   |
|--|---|-------------------|
| 13. Leaving commanding officer to plunder.   | } | A. A.,<br>sec. 6. |
| 14. Leaving post without orders.   |   |                   |
| 15. Forcing safeguard.   |   |                   |
| 16. Impeding provost-marshal.  |   |                   |
| 17. Forcing or striking a sentry.  |   |                   |
| 18. Violence to person or property of inhabitant.  |   |                   |
| 19. Breaking into house for plunder.   |   |                   |
| 20. Intentionally causing false alarms.  |   |                   |
| 21. Treacherously making known parole or countersign.  |   |                   |
| 22. Irregularly appropriating supplies.  |   |                   |
| 23. Sleeping, being drunk, or leaving post when on sentry.   |   |                   |
| 24. Deserting, attempting or persuading to desert. (Liability extends to "under orders for active service.") |   | „ 12.             |

## CRIMES PUNISHABLE WITH PENAL SERVITUDE.

(a) *At Any Time, or Place.*

- |   |       |
|---|-------|
| 1. Desertion, <i>second</i> offence.                                | „ 12. |
| 2. Fraudulent enlistment, second offence.                           | „ 13. |
| 3. Fraudulently misapplying or embezzling public money or goods.    | „ 17. |
| 4. <i>Wilfully</i> releasing a prisoner, or allowing him to escape. | „ 20. |
| 5. Enlistment after discharge with disgrace.                        | „ 22. |



(b) *On Active Service, at Gibraltar, or more than 100 miles from a Civil Court.*<sup>1</sup>

A. A.,  
sec. 41.

- 6. Manslaughter.
- 7. Treason-felony.
- 8. Rape.

(c) *On Active Service only.*

- 9. Leaving ranks without orders.
- 10. Wilfully damaging property without orders.
- 11. Taken prisoner, failing to rejoin when able.
- 12. Without authority holding correspondence with enemy, &c.
- 13. Spreading reports calculated to alarm.
- 14. Using words calculated to alarm in action, or previous to action.
- 15. Violence to, or using threatening or insubordinate language to superior officer.
- 16. Disobeying lawful command of superior officer.

Besides above list, all crimes punishable by death can be punished by penal servitude.

#### CRIMES PUNISHABLE WITH SUMMARY PUNISHMENT.

- 1. Aggravated drunkenness.
- 2. Disgraceful conduct.
- 3. All offences punishable with death or penal servitude.

<sup>1</sup> See note, p. 81.

But summary punishment can only be inflicted when imprisonment cannot be carried out, and can only be awarded for these offences committed on active service.

## CRIMES PUNISHABLE WITH IMPRISONMENT.

All other crimes are punishable with cashiering, or with imprisonment for two years or less.<sup>1</sup>

They are shortly—

Those mentioned above under sec. 6, if committed not on active service.

*Negligently* causing false alarms.

Making known parole or countersign *without treachery* } A. A.,  
sec. 6.

Violence, or threatening or insubordinate language to superior, not on active service. „ 8.

Disobedience to superior, not on active service. „ 9.

Insubordination. „ 10.

Neglect to obey orders. „ 11.

Desertion, first case. „ 12.

Fraudulent enlistment, first case. „ 13.

Assisting to desert, or conniving at. „ 14.

Absence. „ 15.

Disgraceful conduct. „ 16, 18.

Drunkenness (fine in addition). „ 19.

<sup>1</sup> In most sections of the Army Act the punishment is cashiering for officer, imprisonment for soldier, but in a few the penalty is imprisonment for both—examples, secs. 12, 20, 23.

- A. A.,**  
**sec. 20.** Permitting prisoner to escape (if not done wilfully).
- „ **21.** Irregular imprisonment.
- „ **22.** Escape from confinement.
- „ **23.** Corrupt dealing in respect of supplies.
- „ **24.** Deficiency and injury to equipment.
- „ **25.** Falsifying documents; false declarations.
- „ **26.** Neglect to report; signing in blank.
- „ **27.** False accusation or statement.
- „ **28.** Offences in relation to courts-martial.
- „ **29.** False evidence.
- „ **30.** Offences in relation to billeting.
- „ **31.** Offences in relation to impressment.
- „ **33.** False answer on enlistment.
- „ **34.** General offences in relation to enlistment.
- „ **35.** Traitorous words.
- „ **36.** Injurious disclosures.
- „ **37.** Ill-treating soldier.
- „ **38.** Duelling, and attempting suicide.
- „ **39.** Refusing to deliver to civil power soldiers accused of civil offences.
- „ **40.** Conduct to prejudice of military discipline.
- „ **41.** Offences punishable by civil law.

Besides the above, all offences punishable with death or penal servitude are also punishable with imprisonment.

## CHAPTER III.

*PROCEDURE BEFORE TRIAL AND POWERS OF  
COMMANDING OFFICER.*

## PROCEDURE BEFORE TRIAL.

*Arrest.*

PERSONS charged with offences are taken into military custody—that is, arrest or imprisonment. If an offender is kept eight days in custody (if not on active service) without a court-martial being ordered, his commanding officer must make a special report to the general, and continue to do so every eighth day until a court-martial is assembled.

**A. A., sec.  
45.**  
Arrest.

An officer may order a superior into arrest if engaged in any fray, quarrel, or disorder.

No officer or soldier can refuse to receive a prisoner committed by an officer or non-commissioned officer; but the person committing must

furnish an account of the crime in writing as soon as practicable, but in any case within twenty - four hours. The charge against an offender must be investigated by the proper authority *without unnecessary delay*.

Q. R., sec.  
vi. pars.  
18-24 and  
31.

The Queen's Regulations defines close and open arrest, and makes several rules on the subject. As a rule, an officer should not be placed under arrest unless it is intended to try him, and, generally, an officer should not be released from arrest by the officer who arrested him. An officer in arrest cannot demand a court-martial.

Soldiers are not to be confined in the guard-room for minor offences. Offenders are not to perform any military duty; but if required to do so through emergency or error, they are not absolved in consequence.<sup>1</sup> To condone the offence, it seems necessary that the act—the putting on duty—should be done *intentionally*, and by the person *who has power to dispose of* the prisoner. Prisoners are not to bear arms except in case of emergency, or on line of march.

#### *Investigation of Charges by Commanding Officer.*

R. P., 2-8.  
Duty of  
command-  
ing officer as  
to investiga-  
tion of  
charge.

Every commanding officer will take care that a person under his command, when charged with

<sup>1</sup> See Hints to Courts-Martial—O'Dowd.

an offence, is not detained in custody for more than *forty-eight hours* after the committal of such person into custody is reported to him, without the charge being investigated, unless such investigation seems to him impracticable with due regard to the public service. Every case of detention beyond forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the officer commanding the district or garrison.

Every charge against a soldier will be heard in the presence of the accused, who will have full liberty to cross-examine any witness against him, and to call any witnesses, and make any statement in his defence.

Hearing of charge.

The commanding officer will dismiss a charge brought before him if, in his opinion, the evidence does not show that some offence under the Army Act has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with.

Disposal of charge by commanding officer.

If the charge is proceeded with, the commanding officer should order, or apply for a court-martial within thirty-six hours.

Where the accused is remanded by his commanding officer for trial by general or district court-martial, the evidence of the witnesses who were present before the commanding officer shall

Procedure and summary of evidence on remand for trial by general or

district  
court-mar-  
tial.

be taken down in writing in a narrative form in the presence of the prisoner, who, if there is any variance between the evidence of any witness so taken down and the evidence previously given before the commanding officer, shall be allowed to put questions to the witness with reference to such variance; and such questions with the answers shall be added in writing to the evidence taken down.

The evidence of each witness when taken down shall be read over to him and shall be signed by him, or if he cannot write his name, shall be attested by his mark and witnessed. Any statement of the prisoner material to his defence shall be added in writing.

The above evidence and the statement, if any, shall be taken down before the commanding officer, or such officer as he directs; and if the commanding officer thinks it desirable, he may re-hear the case and reconsider his decision, and dispose of it as provided above.

The evidence and statement thus taken, or a true copy thereof, shall be laid before the court-martial before whom the prisoner is tried.

A true copy thereof shall, if the case is such as appears to the convening officer to render it desirable, be given to the prisoner gratis, and in

any other case, shall, if the prisoner so requests,<sup>1</sup> be given to him on payment of one penny for every seventy-two words; and where the prisoner has not obtained a copy of the summary of evidence the court should permit him to inspect the summary or the copy thereof laid before the court, or may order a copy to be given to the prisoner gratis.<sup>1</sup>

Where an officer is charged with an offence under the Army Act, the investigation shall be held, and the evidence taken in his presence in writing, if he requires it, in the same manner, as nearly as circumstances admit, as is required in the case of a soldier.

Procedure  
on charge  
against  
officer.

Where an officer is ordered for trial without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis not less than twenty-four hours before trial, and shall be laid before the court on its assembly.<sup>2</sup>

The officer ordering trial should be careful to avoid expressing any opinion as to the guilt or innocence of the prisoner. When a soldier is to

Q. R., sec.  
vi. para. 84,  
85.

<sup>1</sup> Convening officer should always order this copy to be given to the prisoner if the case is complicated.

<sup>2</sup> But if the convening officer or the senior officer on the spot considers that it is impossible or inexpedient to carry out all the above procedure, he can make a declaration to that effect, and the trial is, nevertheless, valid.—Rules of Procedure, 102.



be arraigned on a serious charge, and charges on minor offences are pending, the convening officer may strike out minor offences; and, as a rule, a charge should not be brought to trial as an addition to a grave charge, if it would not otherwise have been tried by court-martial.

*Prisoner's preparation for Defence.*

R. P., 13-15.  
Opportunity  
for prisoner  
to prepare  
defence.

A prisoner for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser whom he may wish to consult.

Information  
of charge  
and delivery  
of list of  
officers to  
prisoner.

The prisoner before he is arraigned should be informed by an officer<sup>1</sup> of every charge on which he is to be tried; and also that, on his giving the names of any witnesses whom he desires to call in his defence, *reasonable steps* will be taken for procuring their attendance.<sup>2</sup> The interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen, and in the case of any other court-martial, than twenty-four hours.

<sup>1</sup> The commanding officer of the prisoner usually sees that this duty is done, but when a judge-advocate is appointed, he should satisfy himself that the prisoner has been warned, &c.

<sup>2</sup> The duty of the convening officer before the assembly of the court, afterwards that of the president. See also p. 119.

The officer at the time of informing the prisoner should give him a copy of the charge-sheet, and, where the prisoner is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.

A list of the names, rank, and corps of the president and officers who are to form the court, and where officers in waiting are named also of those officers, should, as soon as the president and officers are named, be delivered to the prisoner if he desires it.<sup>1</sup>

If it appears to the court that the prisoner is liable to be prejudiced by any non-compliance with this rule, the court shall take steps, and if necessary adjourn, to avoid the prisoner being so prejudiced.<sup>2</sup>

Any number of prisoners may be tried together for an offence charged to have been committed by them collectively, but in such case notice of the intention to try the prisoners together should

Joint trial  
of prisoners.

<sup>1</sup> This list should always be given in the case of a general court-martial.

A copy of the summary of evidence should also be given to the prisoner, unless in cases where, as frequently happens, the facts are very simple. (See p. 49, and footnote.)

<sup>2</sup> But if the convening officer, or the senior officer on the spot, considers that it is impossible or inexpedient to comply with the above procedure, he can make a declaration to that effect, and the trial is nevertheless valid.—Rules of Procedure, 102.

be given to each prisoner at the time of his being informed of the charge, and any prisoner may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other prisoners proposed to be tried together with him will be material to his defence; the convening authority or court, if satisfied that such evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and such prisoner shall be tried separately.

#### FRAMING CHARGES.

R. P., 9-12.

Full instructions are now issued as to framing charges, and the wording of each charge against every section of the Act is prescribed in an Appendix to Rules of Procedure. See Appendix I.

Charge-sheet and charge.

A charge-sheet, which may include one or more charges, contains the whole issue or issues to be tried by a court-martial at one time.

A charge means an accusation that a person amenable to military law has been guilty of an offence.

Commencement of charge-sheet.

Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his name, and

rank, and corps (if any), and in the case of a soldier, his name, number, rank, and corps (if any),<sup>1</sup> and where he does not at the time of the trial belong to the regular forces, should show by the description of him, or directly by an express averment, that he is amenable to military law in respect of the offence charged.

Each charge should state one offence only, and in no case should an offence be described in the alternative *in the same charge*.

Contents of  
charge.

Each charge should be divided into two parts—

1. The statement of the *offence*; and,
2. The statement of the *particulars* of the act, neglect, or omission constituting the offence.

The offence should be stated, if not a civil offence, in the words of the Army Act,<sup>2</sup> and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him.

<sup>1</sup> Non-commissioned officers should be arraigned in their army rank; and if they hold acting rank, it should appear in brackets—example, <sup>No. 100</sup> — Bde., Private (Lance-corporal) A—B—.

<sup>2</sup> The headings and marginal notes in *italics* form no part of the Army Act, and must not appear in the statement of charge.

The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.<sup>1</sup>

Validity of  
charge-  
sheet.

A charge-sheet shall not be invalid by reason only of any mistake in the *name or description* of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to him.<sup>2</sup>

Separate  
charge-  
sheets.  
R. P., 61.

Where the convening officer directs any charges against a prisoner to be inserted in different charge-sheets, the prisoner shall be arraigned, and until after the finding tried, upon each charge-sheet separately.

The trials upon the several charge-sheets shall be in such order as the convening officer directs.

When the court have tried the prisoner upon all the charge-sheets, they shall, in the case of the finding being "Not guilty" on all the charges,

<sup>1</sup> Example, "In having done the acts alleged in the particulars to the first charge," or, "place and time aforesaid, he was deficient of the necessities above-mentioned in the second charge." If acquitted on the charge containing the particulars, and convicted on the other, the particulars must be set out in full in any record of conviction.

<sup>2</sup> Court may amend this mistake. Rules of Procedure 33, chap. iv. p. 93. Also chap. vi. p. 166.

proceed in the usual manner,<sup>1</sup> and in case of the finding on any one or more of the charges being "Guilty," proceed as directed for that event,<sup>1</sup> as if all the charges had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if that had been the case.

Separate  
charge-  
sheets.

If the convening officer directs that, in the event of the conviction of a prisoner upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court may so proceed.

Where a charge-sheet contains more than one charge, the prisoner may, before pleading, *claim* to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately, and in such case the court, unless they think his claim unreasonable, shall do so.

Every charge-sheet will begin as shown in the example given (p. 62).

Framing  
charges.  
R. P., 1st  
Appendix.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases words must be added to show that the person is amenable to military law.

Description  
of prisoner.

<sup>1</sup> The usual procedure on findings of "Guilty" or "Not guilty" are described further on, pp. 95, 97.

Framing  
charges.

The statement of the offence will be in one of the forms in Appendix I.

Where two or more words or expressions occur in a charge bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof.<sup>1</sup>

Alternative  
charges.

Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts.

Where two or more of the words or expressions bracketed together appear, when coupled together with the word *and*, accurately to describe the offence, the charge may couple together such words or expressions; but in no case must the charge couple with the word *or* two or more of the words or expressions bracketed together.

For example, a man may be charged with making away with his arms, ammunition, *and* necessaries, but a charge for making away with

<sup>1</sup> See Appendix I.

his arms, ammunition, *or* necessities will be a Framing charges. bad charge.

A man should not be charged, however, with making away with by pawning *and* selling his arms and necessities, as in such case he is charged with at least two distinct offences which ought to be included in at least two distinct charges, one for making away with by pawning his arms and necessities, the other for making away with by selling his arms and necessities; but he may, if desirable, be charged in four distinct charges, one for pawning his arms, another for pawning his necessities, a third for selling his arms, and a fourth for selling his necessities.

In the former example the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example there are two distinct offences of making away with his articles, — (a) by pawning, (b) by selling, — although committed in respect of the same objects — arms and necessities.

In a few cases, shown in *italics* bracketed thus [ ] (as for instance in sec. 4 (1 b),<sup>1</sup> words

<sup>1</sup> The figures here and in the rest of this part refer to corresponding figures, &c., in Appendix I.



Framing  
charges.

may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression, such as "other person," or "other place," or "other means," and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

Words inserted in brackets, thus [ ], without italics, must be adopted or not, according to circumstances. For example, if the offender was not on active service, the words "when on active service" must be omitted.

In some cases (for example, sec. 10 (4), sec. 16, sec. 37), the offence can only be committed by an officer, or by a non-commissioned officer, or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the prisoner is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit. In some cases the offence, even though not expressed in the Act to be limited to an officer or soldier, can, from the nature of things, only be committed by an officer or soldier.

For example, the offence in sec. 4 (1) (a), can only be committed by an officer, while the offence of enlisting after discharge with disgrace (sec. 32) can only be committed by a soldier.

Framing  
charges.

The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," &c., or "in having," &c., and stating in brief ordinary language what the prisoner is alleged to have done.

The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

The statement of particulars should specify all the *ingredients* necessary to constitute the offence: for example, if the charge is under sec. 9 (2), for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the prisoner disobeyed the command; while, if the charge is under sec. 9 (1), the "particulars" should also show how the command was given *personally*, and how the prisoner showed a *wilful defiance of authority*.

The "particulars" should always give a general

Framing  
charges.

description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between,") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave, or being drunk on a post.

In some cases the offence may be stated with most accuracy as having been committed between two days or between two times; as, for instance, in the case of absence without leave or of quitting a post; in other cases "between" may be used in consequence of the exact day or exact time not being known.

The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant,

or unless the word "between" is the most accurate expression of the place or time. Framing charges.

In many cases, as, for instance, where the prisoner's defence is an *alibi*, the time and place may be of the utmost importance in proving that *alibi*, although it is not the essence of the offence.

There must be added at the end of the "particulars" a statement of any expenses, loss, or damage in respect of which the court-martial will be asked to award compensation under Army Act, sec. 137 or 138. For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment an averment to the effect that the prisoner thereby obtained a free kit, value £1, 5s. 5½d., and, in the case of a charge under sec. 10 (2) or (3), that the prisoner thereby damaged Private Thomas Atkins's coat to the value of five shillings, and Private Henry Martin's watch to the value of six shillings; and other statements may be made according to the facts.

If, however, the expenses, loss, or damage, were caused by an act or omission which constitutes another offence separately specified in the Act, that act or omission should be charged as a separate offence: for example, if a man deserts and is deficient in his regimental necessities, he should be charged in a separate charge

for loss by neglect of his necessaries.<sup>1</sup> It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

A charge for an offence under the Acts relating to the auxiliary forces or reserve forces or any Act other than the Army Act, must follow as nearly as possible the words of the Act, and where the enactment is in the alternative, each charge must state one only of the alternatives.

#### EXAMPLES OF FORMS OF CHARGES.

##### *Commencement of Charge-Sheet.*

The prisoner [*number, rank, name, regiment,*] a soldier [*officer*] of the regular forces,

*or,*

Different  
headings of  
charge-  
sheets.

The prisoner [*rank, name,*] on half-pay [*state office held on the staff of the army*],

*or,*

Q. R., sec.  
vi. para. 80,  
81.

<sup>1</sup> All mention of stoppages for necessaries in the *sentence* is unnecessary, that being a matter settled between the captain and the soldier. All money which has to be made good to the public must be mentioned. It is unnecessary to specify values of regimental necessaries in the charge: it follows that generally, when values are not attached to any articles in a charge, all reference to such articles will be omitted in the sentence.

The prisoner [*rank, name,*] half-pay [*or pensioner*] employed on military service under the orders of [*rank, name,*] an officer of the regular forces,

*or,*

The prisoner, major-general [*or other rank*] [*name*] commanding [*or otherwise on full pay*],

*or,*

The prisoner [*number, rank, name*] a militiaman, of the                regiment, called out for training, [*or embodied or otherwise subject to military law*],

*or,*

The prisoner [*name, description,*] being a follower of the                forces, is charged with—

*Where the position of the prisoner as respects his conditions of service has changed between the time when he committed the offence and the time when he is charged, as, for example, if the training period of a militiaman has expired or if a soldier has been discharged and therefore ceased to be subject to military law, the commencement of the charge will run as follows:—*

The prisoner [*name*] is charged with having while being [*number, rank,*] of the                regiment,



*lar forces without declaring the circumstances of his discharge;*

in that

having been discharged with ignominy from the 84th Regiment on the 29th August 1879, he enlisted at London on the 19th September 1881 in the City of London Regiment, without declaring the circumstances of that discharge, thereby obtaining a free kit, value £1, 4s. 3d.

Secondly, *Fraudulent enlistment;*

Second  
charge.

in that

at London, on the 20th October 1881, while belonging to the City of London Regiment, he enlisted in her Majesty's regular forces, thereby obtaining a free kit, value £ .

Thirdly, *Losing by neglect his arms, equipment, clothing, and regimental necessities;*

Third  
charge.

in that

at York, on the 16th March 1882, he was deficient of the following articles of his arms, equipments, clothing, and regimental necessities—viz., 1 pair shoes, value 5s. 5d.; 1 snap-cap, value 6½d.; 1 tin blacking, 1 brass brush, 1 cloth brush, 1 pair gaiters, 1 flannel shirt, 1 spoon.

### 3D EXAMPLE.

#### CHARGE-SHEET.

The prisoner, <sup>No. 120</sup>  
— Bde., Private William Manor, the  
Highlanders, is charged with—

First, *Using threatening language to his superior officer;* First charge.

in that

at Fort George, on the 10th January 1882, he said to Colour-serjeant Haldane, Highlanders, his superior officer, "You Scotch bastard, if I had my hands free, I would do for you," or words to that effect.



Second  
charge.

Secondly, *Making away with by destruction his equipment ;*

in that

at the place and time stated in the first charge, he cut in pieces his valise straps.

Third  
charge.

Thirdly, *Being concerned in making away with by destruction his arms ;*

in that

at the place and time stated in the first charge, he was seen to carry away his rifle, and shortly afterwards to present himself at the guard-room without it, the said rifle being subsequently found hidden away and completely useless.

#### 4TH EXAMPLE.

##### CHARGE-SHEET.

The prisoner, No. 2000, Private John Smith, depôt, the Regiment, is charged with—

First charge. First, *After having been discharged with disgrace from a part of her Majesty's forces, enlisting in the auxiliary forces without declaring the circumstance of his discharge ;*

in that

at Perth, on the 1st January 1883, after having been discharged with ignominy from the                      Regiment, he enlisted into the 3d battalion Royal                      , without declaring that he had been so discharged.

Second  
charge.

Secondly, *After having been discharged with disgrace from a part of her Majesty's forces, enlisting in the regular forces without declaring the circumstance of his discharge ;*

in that

at Perth, on the 26th February 1883, after having been discharged with ignominy from the                      Regiment, he enlisted in the                      Regiment, without declaring that he had been so discharged.

Thirdly, *Deserting her Majesty's service ;* Third charge.  
in that  
at Perth, on the 1st March 1883, he deserted from the  
depôt, Regiment.

5TH EXAMPLE.

CHARGE-SHEET.

The prisoner, No.  $\frac{116}{1523}$ , Private John Preston, 120th  
Regiment, is charged with—

*When a soldier, acting as a sentinel, sleeping on his post ;* Charge.  
in that  
at Cape Town, South Africa, on the 2d July 1880, he  
between 5 and 7 o'clock in the evening, while posted as a  
sentinel at the barracks, was asleep.

6TH EXAMPLE.

CHARGE-SHEET.

The prisoner, James Jones, lieutenant-colonel of the  
Rifle Volunteers, being subject to military law at  
the time of committing the hereinafter-mentioned offence  
by reason of his, with his own consent, doing duty with  
troops subject to military law, is charged with—

&c.                      &c.                      &c.                      Charge:

7TH EXAMPLE.

CHARGE-SHEET.

The prisoner,  $\frac{\text{No. 1263}}{\text{— Bde.}}$ , Corporal William Smith, of the  
Regiment, is charged with—

*Conduct to the prejudice of good order and military discipline ;* Charge.

in that  
at Gosport, on or about the 4th October 1881, he allowed  
Private Norris, one of the guard under his command, to  
get drunk.

---

## 8TH EXAMPLE.

## CHARGE-SHEET.

The prisoner, James Robertson, being a person subject  
to military law, by reason of holding from the general  
officer commanding her Majesty's forces in the field in  
Afghanistan a pass entitling him to be treated on the  
footing of an officer, is charged with—

Charge.

*Striking his superior officer ;*

in that  
at Candahar, on the      day of      18      , he (being at-  
tached to the      Dragoons) struck with his clenched fist  
Alfred Clark, the colonel in command of the      Dragoons.

---

## 9TH EXAMPLE.

## CHARGE-SHEET.

The prisoner, <sup>No. 62</sup><sub>—Bde.</sub>, Private James Patrick of the  
Regiment, is charged with—

Charge.

*When on active service, committing the offence of murder ;*

in that  
on the 10th day of June 1881, he did feloniously, wilfully,  
and of malice aforethought, kill and murder Thomas  
Macdonald.

---

## 10TH EXAMPLE.

## CHARGE-SHEET.

The prisoner, <sup>No. 999</sup><sub>—Bde.</sub>, Drummer Alexander Higgins,  
Regiment, is charged with—

First, *Committing a civil offence—that is to say, theft*; First charge.

in that

at Dover, on the , he feloniously did steal, take, and carry away a pair of shoes, four coats, and three shirts, belonging to John Davis.

Secondly, *Committing a civil offence—that is to say, receiving goods, knowing them to have been stolen*; Second charge.

in that

at the place and time aforesaid, he was in possession of the property mentioned in the first charge, which had been stolen from John Davis, and which he knew to have been stolen.

# 11TH EXAMPLE.

## CHARGE-SHEET.

The prisoner, Lieutenant Joshua Jenkins, of the shire Regiment, is charged with—

*Committing a civil offence—that is to say, an assault, occasioning actual bodily harm*; Charge.

in that

at Bareilly, on the 1st January 1868, he struck with a stick and ill-treated Seigar Bokus, thereby then occasioning to the said Seigar Bokus actual bodily harm.

## POWERS OF COMMANDING OFFICER.<sup>1</sup>

The lowest military tribunal is that of the commanding officer. If a commanding officer,

<sup>1</sup> The term *Summary Punishment* is used in the Queen's Regulations to express the powers of commanding officer.

Summary punishment by court-martial, on the authority of the Army Act, sec. 44 (5), and rules made by Secretary

after investigation, does not dismiss a case, he may either dispose of it summarily himself, or send it for trial by court-martial.

Should he take the former course, he has the following

*Powers.*

A. A., sec.  
46.

Powers of  
command-  
ing officer.

*a. Imprisonment*, not exceeding seven days; and in cases of absence without leave, any period not exceeding twenty-one days; but if over seven days is awarded, the imprisonment is not to exceed the number of days of absence. Also, when the imprisonment exceeds seven days, the accused may demand that the evidence against him be given on oath. The court-martial oath is, in that case, to be administered to each witness.

*b. Fine* of ten shillings for the offence of drunkenness, either in addition to, or without imprisonment. Unless, however, the case is one of aggravated drunkenness, or unless the offender has had four previous convictions of drunkenness within the preceding twelve months, the commanding officer must deal with the case summarily. But

of State, must not be confounded with summary punishment by commanding officer, on the authority of Army Act, sec. 46, and Queen's Regulations, sec. vi. par. 42, and following.

The former is the new substitute for corporal punishment, while the latter is the magisterial power (long exercised) of a commanding officer.

this is not to affect the jurisdiction of any court-martial (with reference to the Army Act, sec. 19).

*c. Deduction of Pay*, as authorised by the Army Act, in addition to other punishment.<sup>1</sup>

An offender cannot be tried by court-martial for an offence which has been summarily dealt with by commanding officer, nor punished by commanding officer for any offence for which he has been tried by court-martial or civil court.

Soldier cannot be punished by two tribunals.

Award of imprisonment up to seven days is to be made, as formerly, in hours; award exceeding seven days, in days.

Q. R., sec. vi. par. 42.

A soldier now has the right to appeal to a district court-martial, instead of submitting to imprisonment, fine, or deduction of pay, by his commanding officer.

Right of appeal.

Minor punishments can be given, as formerly, but cannot be given if the imprisonment awarded exceeds seven days. A non-commissioned officer is not liable to minor punishment.

Minor punishments.

For details, see Queen's Regulations, sec. vi. par. 42-50.

For purposes of deduction of pay no time can be counted as a day, unless the absence or imprisonment has lasted six hours, or unless the

A. A., sec. 140.  
R. W., 766.

<sup>1</sup> For deduction of pay authorised, see regulations as to pay, p. 200.

absence caused any military duty to be thrown on some other person.

For definition of absence, see Royal Warrant, Pay, &c., July 1881, par. 766 (a) and 766 (b).

Time of commencement.  
R. P., 6.

The term of imprisonment when awarded by a commanding officer in days shall begin on the day of the award. The term of imprisonment when awarded by a commanding officer in hours, shall begin at the hour when the prisoner is received at the provost prison or the public prison, military or civil, to which he is committed.

When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase that punishment for that offence.

Right of trial by court-martial in lieu of summary award.  
R. P., 7.

A soldier who, in consequence of the summary award of his commanding officer, will suffer any deduction from his ordinary pay, shall have the same right to be tried by a district court-martial as if he were ordered by his commanding officer to suffer that deduction.

If the prisoner will in consequence of the summary award of his commanding officer suffer any deduction from his ordinary pay, or is ordered by the summary award of his commanding officer to suffer imprisonment or to pay a fine, or to suffer any deduction from his ordinary

pay, the commanding officer will *inform the soldier of his right* to be tried by a district court-martial, and will ask him if he wishes to be so tried. If the commanding officer omits to ask the above question, the soldier may at any time on the same day before the hour fixed for the commitment and release of prisoners, claim his right to be tried by a court-martial.

The court, if the soldier demands it, *must* be a district court-martial, but otherwise may be a regimental court-martial.

Except as above, a soldier has no right to claim a trial by court-martial instead of submitting to the summary award of his commanding officer; but the commanding officer may, if he thinks proper, vindicate the justice of his award by remanding him for trial by court-martial instead of punishing him summarily, but he must do so before the soldier leaves his presence after the award is made.

The commanding officer of a detachment has the full powers of a commanding officer; but superior authority may, if the commanding officer is below the rank of major, restrict him from the exercise of these powers, and also from the power of convening regimental courts-martial. Even then, in the case of necessity, the commanding officer can act; but he must, in that

Q. R., sec.  
vi. para. 13,  
14, 15.

Commanding officer of detachment, powers of



event, make immediate report to his superior. In the case of two or more detachments placed under one command, the senior officer will alone have the powers of a commanding officer. Commanding officer may delegate power of minor punishment, not exceeding seven days' confinement to barracks, and he can remit any such award.

Delegation.  
Q. R., sec.  
vi. par. 46.

Drunken-  
ness.  
Q. R., sec.  
vi. para.  
51-56.

If the number of previous cases of drunkenness recorded against a soldier within twelve months is between four and eight, it is optional with commanding officer to try the case or dispose of it himself: if eight, the offender should, as a rule, be tried; but exception may be made at discretion of commanding officer, if the soldier has already been tried for simple drunkenness within the twelve months.

When drunkenness is committed along with a more serious offence for which a soldier is to be tried, he should not be charged with drunkenness before the court-martial unless he is liable to trial for that offence, but the commanding officer should dispose of the charge for drunkenness.

For scale of fines, see Queen's Regulations, sec. vi. par. 56.

Offences dis-  
posable by  
commanding

Although, as far as the Act of Parliament (Army Act, 1881) is concerned, *all tribunals can*

*try all offences*,<sup>1</sup> this power is restricted by regulation. The following are the only offences which a commanding officer can dispose of, or try by regimental court-martial, without reference: Offences against Army Act, secs. 10 (except sub-sec. 1), 11, 15 (except absence without leave exceeding twenty-one days), 19, 24, 40.

officer or  
regimental  
court-mar-  
tial.  
Q. R., sec.  
vi. par. 35.

Shortly they are—

Striking, using, or offering violence to a person in whose custody he is placed.	} A. A., sec. 10.
Resisting an escort.	
Breaking out of barracks.	
Neglecting to obey orders.	,, 11.
Absence without leave, not exceeding twenty- one days.	} „ 15.
Absence from parade.	
Quitting parade without leave.	
Without urgent necessity quitting the ranks.	
Being out of bounds without a pass.	
Absence from school.	} „ 19.
Drunkenness.	
Loss or deficiency of kit, &c.	
Conduct to the prejudice of good order and mili- tary discipline.	,, 24. ,, 40.

The commanding officer may, if he sees fit,

<sup>1</sup> Except the field general court-martial, which can only try a certain class of offences—p. 127.

refer these charges to a superior. Any other charge *must* be referred (if not dismissed by commanding officer) to a superior, unless delay seems inexpedient; in which case the commanding officer can dispose of it himself, reporting immediately to the superior to whom he would otherwise have referred. It is undesirable to send a case before a court-martial, when it appears doubtful whether the evidence will secure a conviction.

Doubtful  
cases.  
Q. R., sec.  
vi. par. 36.

Illegal or  
excessive  
punishment.  
Q. R., sec.  
vi. par. 50.

If the general commanding considers any summary punishment awarded by a commanding officer to be illegal or oppressive, he can, within one year of the award, cancel or reduce the punishment. After the expiration of a year, the general must refer any case deserving of consideration to the commander-in-chief.

Definition of  
command-  
ing officer.  
R. P., 128.

The expression commanding officer, as used in regard to powers of commanding officer, means, in relation to any person, the officer whose duty it is, under regulations or custom, to deal with a charge against that person—that is, to dispose of it himself, or to refer it to a superior authority.

## CHAPTER IV.

*COURTS-MARTIAL.**Different Descriptions of Court-Martial.*

THE ordinary descriptions of court-martial before which a prisoner is arraigned, whose case is too serious to be disposed of summarily by a commanding officer, are—

Descriptions  
of court-  
martial.

- (1) Regimental court-martial.
- (2) District court-martial.
- (3) General court-martial.

Each of these tribunals can try *any* offence, the difference between them consisting in their powers of *punishment*, and in the incapacity of the lower courts to try certain *persons*.

It is not intended, however, that grave crimes should be tried by the lower courts. Crimes which require a more severe punishment than a commanding officer can award, should be dealt with by regimental court-martial. The powers

of district courts-martial are sufficient to deal with all ordinary offences committed by non-commissioned officers and soldiers; and the general court-martial is to be reserved for officers, and such aggravated cases of serious crimes as are punishable with penal servitude or death, or where a serious example is expedient.

Q. R., sec.  
vi. par. 68.

Besides these *ordinary* courts, there are the—

- (4) Field general court-martial; and the
- (5) Summary court-martial.

### *Convening.*

A royal warrant is necessary for convening and confirming general courts-martial.

Warrant  
necessary  
for general  
court-mar-  
tial.  
A. A., secs.  
48, 122.

Warrants for convening, or confirming, or for both, are issued by her Majesty under her sign-manual to any officer not below the rank of field-officer, and abroad, where no field-officer is in command, to a captain. The warrant may empower the holder to delegate his authority to field-officers under his command; it may also give power to confirm, or reserve that power to her Majesty. At home all general courts-martial are laid before her Majesty by the Judge Advocate-General, and are confirmed by her.

The power to convene district courts-martial does not now, as formerly, emanate directly from the Crown, but is made an incident of the power of an officer who holds a warrant to convene general courts-martial. The latter officer can convene district courts-martial himself, and may delegate to any officer not under the rank of captain power to convene, or to convene and confirm, district courts-martial for the trial of persons under his command.

Power to convene district court-martial.  
A. A., secs. 48, 123.

Warrants may be addressed to officer by name, or by designation of his office.

An officer authorised to convene a general or district court - martial, any commanding officer not below the rank of captain, any officer in command of two or more corps, or portions of corps, if not below the rank of captain, also on board ship, a commanding officer of any rank, may, *without warrant*, and by virtue of the Army Act alone, convene a regimental court - martial for the trial of soldiers under his command.

Power to convene regimental court-martial.  
A. A., sec. 47.

### *Composition.*

The legal minimum for a general court-martial is, in the United Kingdom, India, Malta, and Gibraltar, nine members; elsewhere, five. All must have held commissions three years, and

Composition.  
A. A., secs. 47, 48.

not less than five members must be of rank not below captain.

Legal minimum for a district court-martial is, in the United Kingdom, India, Malta, and Gibraltar, five; elsewhere, three. Members must have two years' service.

Legal minimum for a regimental court-martial, three, each of whom must have held a commission at least one year.

### *Jurisdiction.*

Jurisdiction, general court-martial.

General court-martial has full powers. It can try any person subject to military law, and can sentence to death or any punishment, as laid down in the scale of punishments (Army Act, sec. 44).

District court-martial.  
A. A., sec. 48.

A district court-martial cannot try an officer, nor a warrant officer holding an honorary commission, but it may try any offence. It can award any authorised punishment other than death and penal servitude.

Regimental court-martial.  
A. A., sec. 47.

A regimental court-martial can also try any offence and any soldier (includes non-commissioned officer), but cannot try an officer or warrant officer, and its powers of punishment are limited to forty-two days' imprisonment, reduction of non-commissioned officer, fine of £1, and stoppages.

*Qualification of Members.*

All officers to be *qualified* to sit on courts-martial must hold commissions, and must be subject to military law. They need not necessarily be combatant officers (except the president),<sup>1</sup> they may belong to any corps, or be unattached, and may try persons attached to any corps, or unattached.

Qualification of members.  
A. A., sec.  
50. R. P., 19.

Certain officers, otherwise qualified, are however disqualified for certain reasons—

Disqualification of members.  
A. A., sec.  
50. R. P.,  
108, 106. 19.

The convening officer is disqualified to sit as member, except in the case of field general court-martial and summary court-martial.

On an *ordinary court-martial*<sup>2</sup> (that is, general, district, or regimental), the following persons are also disqualified as members, or to act as judge-advocate:—

The prosecutor, and witnesses for the prosecution.

Commanding officer of the prisoner.

Persons who (magisterially) investigated the charges on which the prisoner is arraigned,

<sup>1</sup> Who must be a combatant officer if any of the members are such. Regimental courts-martial in army service corps furnish common examples of these courts.

<sup>2</sup> For disqualification of members of field general court-martial and summary court-martial, see pp. 127, 130.



or who were members of a court of inquiry respecting the matters on which the charges against the prisoner are founded.

Any one who has a personal interest in the case.

The last two cases of disqualification—viz., members of a court of inquiry respecting the matters on which the charges are founded, and any one having a personal interest in the case, are contained in Rules of Procedure, 19, and are not part of the Army Act. It should be observed that the Rules of Procedure, although to be judicially noticed (Army Act, sec. 70), have not apparently the same force as the Army Act itself, and that a breach of them would not generally invalidate proceedings, *unless injustice was done to the prisoner* (see Rules of Procedure 55 B),<sup>1</sup> whereas a breach of the Army Act would, as a rule, have that effect.

*Appointment, Rank, and Corps of President and Members.*

Rank of  
president.  
A. A., secs.  
47, 48.

In all courts-martial the president must be appointed by the convening officer. On a regimental court-martial he must not be under the

<sup>1</sup> Page 111, below.

rank of captain, except on the line of march, or on board ship, or when a captain is not available, and this must be stated in the order appointing the president: in these cases an officer of any rank may be president.

President of a general or district court-martial is not to be under the rank of a field-officer unless the convening officer is under that rank; also when a field-officer is, in the opinion of the convening officer, not available (such opinion to be expressed in the order convening the court, and to be conclusive), a captain may be appointed; but the president of a general court-martial is never to be of lower rank than captain: for a district court-martial, if a captain is not available, a subaltern may be appointed.

When a general or a colonel is available as president of a general court-martial, an officer of inferior rank is not to be appointed. When a commanding officer is to be tried, as many members as possible are to be officers who have held, or are holding, similar commands.

Q. R., sec.  
vi. par. 95.

Rank of  
members.

The members of a court-martial on an officer should be of equal, if not superior, rank to the prisoner. On the trial of a subaltern two officers of that rank will be a sufficient proportion.

R. P., 21.

Officers under the rank of captain cannot be members on the trial of a field-officer.

A. A., sec.  
48.

Q. R., sec.  
vi. par. 93.

In the case of a general court-martial, where a trial is likely to be prolonged, it will usually be found expedient to form the court of a larger number than the legal minimum. Waiting members should also be detailed to meet the case of reduction by challenge.

Corps of  
members.  
R. P., 20.

A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry or the same battalion of infantry, unless the convening officer states in the order convening the court that, in his opinion, other officers are not (having due regard to the public service) available, and also, if he himself belongs to the same regiment of cavalry or battalion of infantry as the prisoner, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time.

In the case of a court-martial for the trial of a prisoner belonging to the auxiliary forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) *practicable*, two members at least of the court should belong to the auxiliary forces, and one or both of those members should belong to the

branch of the auxiliary forces to which the prisoner belongs.

*Laws as to Procedure in Certain Cases.*

A. A., sec. 53.

If a court-martial is reduced after the trial has commenced below the legal minimum, the court is dissolved. If the president be unable to attend, and the court is not thereby reduced below the legal minimum, the convening officer may appoint the senior member president if he is of sufficient rank, but if not, the court is dissolved. Should the court not be able to continue, through the illness of the prisoner before the finding, it is dissolved. The president has power to clear the court, to adjourn, and to view any place.

Procedure on reduction of members.

Power to clear court, adjourn, view any place.

When a court-martial is dissolved in the above cases, a prisoner can be tried again.

In case of equal votes on the finding, the prisoner is acquitted. On any other decision *after the commencement of the trial* the president has a second or casting vote. Sentence of death, however, is not legal unless two-thirds of the members concur.<sup>1</sup> A recommendation to mercy,

Equal votes.

A. A., sec. 48.

<sup>1</sup> On a general court-martial. In the case of a field general court-martial and a summary court-martial, all members must concur. See pp. 120, 125, 127, 132.

Recommendation to mercy. if proposed, is to be attached to the proceedings and promulgated with them.<sup>1</sup>

*Procedure on Convening.*

Procedure of officer on convening court-martial.  
R. P., 16-18.

An officer before convening a court-martial, which should be done as soon as practicable, should first satisfy himself that the charges to be tried are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the prisoner, or refer the case to superior authority.

He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

If more than fifteen days in the United Kingdom, or more than thirty days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial receives an application for a court-martial and the date at which the case is disposed of, either by the assembly of a general or district court-martial, or otherwise, the officer shall report the

<sup>1</sup> A recommendation to mercy would be unusual, for the court are bound to impose what they consider a *just* sentence: it might occur, however, in case where the Act makes a punishment peremptory; for example, cashiering for scandalous conduct of officer.

case, and the reasons for the delay, to the commander-in-chief.

The officer convening a court-martial shall appoint or detail the officers to form the court, and may also appoint or detail such waiting officers as he thinks expedient. He must also send to the officer appointed president the original charge-sheet on which the prisoner is to be tried, and the summary of evidence.

If before the prisoner is arraigned the full *number* of officers *detailed* are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, the court should ordinarily adjourn for the purpose of fresh members being appointed, and the president should report the circumstances to the convening authority; but if the court are of opinion that in the interests of justice and for the good of the service it is inexpedient so to adjourn, they may, if not reduced in number below the *legal minimum*, proceed, recording their reasons for so doing.

Adjournment for insufficient number of officers.

If the court adjourn for the purpose of the appointment of a new president or of fresh members, the convening officer may convene another court.

## PROCEDURE AT TRIAL.

R. P., 22, 23.

*Constitution of Court.*

Inquiry by  
court as to  
legal con-  
stitution.

On the court assembling, the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court, and it shall be the first duty of the court to satisfy themselves that the court is legally constituted; (that is to say),

- (i.) That so far as the court can ascertain, the court has been convened in accordance with the Army Act and Rules of Procedure.
- (ii.) That the court consists of a number of officers not less than the legal minimum.
- (iii.) That each of the officers so assembled is eligible for serving on that court-martial.

The court should further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.

Inquiry by  
court as to  
amenability  
of prisoner,  
and validity  
of charge.

The court next should satisfy themselves in respect of each charge about to be brought before them,—

- (i.) That it appears to be laid against a person

amenable to military law, and to the jurisdiction of the court; and

- (ii.) That each charge discloses an offence under the Army Act, and is framed in accordance with the Rules of Procedure, and is so explicit as to enable the prisoner readily to understand what he has to answer.

The court, if not satisfied on any of the above matters, should report their opinion to the convening authority, and adjourn for that purpose.<sup>1</sup>

### *Challenge.*

When the court have satisfied themselves as to the above facts, the prosecutor, who must be a person subject to military law, should take his place, and the court shall cause the prisoner to be brought before it<sup>2</sup> (if not already there).

The court shall then ascertain that it is constituted of officers to whom the prisoner makes no reasonable objection.

If the prisoner objects to the president, and the objection is allowed by one-third or more of

A. A., sec.  
51.  
R. P., 24-35.  
Appearance  
of prosecut-  
or and  
prisoner.

Proceedings  
for chal-  
lenge of  
members of  
court.

<sup>1</sup> A medical certificate as to fitness of prisoner for punishment is not now required. Commanding officer is responsible that an unfit prisoner is not brought before a court-martial.

<sup>2</sup> Prosecutor and prisoner may or may not be present during the above preliminaries; the former, however, has no *status* before the court until after these proceedings.



the members, the court *must* adjourn, and the convening officer *must* appoint a new president. If the prisoner objects to a member, the matter is decided by a majority of votes. If the objection is allowed, the member retires, and his place is taken by a member in waiting. Should there be none such the court adjourns, and reports to the convening officer, who will appoint a new member.

The prisoner has no right to object to the prosecutor or judge-advocate. He shall state the names of all the officers to whom he objects before any objection is disposed of, and he may call any person to give evidence in support of his objection.

If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; and on an objection to an officer, all the other officers present shall vote on the disposal of such objection, notwithstanding that objections have been made to any of those officers.

Some of the usual grounds of challenge are, that a member is not qualified to sit on the court, that he is a material witness, or that he is prejudiced against the prisoner. The slightest personal interest should disqualify; for instance, an

officer could not be member on the trial of a soldier of his regiment for stealing mess property. Unless objections are obviously groundless, the court should allow them.

The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court as in the case of other officers.

*Swearing of Court.*

A.A., sec. 52.  
R. P., 26-30,  
80.

As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been overruled, the oath or solemn declaration shall be administered to each member of the court as follows:—

Swearing of  
members.

If there is a judge-advocate, the oath shall be administered by him, to the president first, and afterwards to the other members of the court.

If there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.

After the members of the court are all sworn an oath shall be administered to the following

Swearing of  
judge-advocate and  
other officers.

persons—the judge-advocate, officers attending for instruction, shorthand - writer, interpreter—or to such of them as are present at the court-martial, by the president, or by some other member of the court, or, except in the case of the judge - advocate, by the judge-advocate, if present.<sup>1</sup>

Witness.

Swearing of person according to the form of his religion.

An oath is also administered to every witness.

An oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience, and the words “You do swear” and “So help me God” may be omitted or varied for the purpose.

If any person objects, or is incompetent to take an oath, a solemn declaration<sup>2</sup> in the prescribed form is deemed to be an oath.

A person may (1) object to take an oath on religious, Bible grounds—example, a Quaker; (2) be objected to as incompetent, because an oath would have no binding effect on his conscience—example, an atheist, a person having no belief in a Supreme Being. In the first case the court must be satisfied of the sincerity of the objection, in the second case of the incompetency, before they allow the declaration to be taken.

<sup>1</sup> For forms of oath, see Appendix II.

<sup>2</sup> For form, see Appendix II.

*Arraignment.*

After the members of the court and other persons are sworn, the prisoner shall be arraigned on the charges against him.

Arraign-  
ment of  
prisoner.  
R. P., 81-85.

The charges upon which the prisoner is arraigned will be read to him, and he will be required to plead *separately* to each charge.

The prisoner, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with the Rules of Procedure.

Objection  
by prisoner  
to charge.

At any time during the trial, if it appears to the court that there is any mistake in the name or description of the prisoner in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

Amendment  
of charge.

If on the trial of any charge it appears to the court, at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, or omission from, or alteration in the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed after due notice to the prisoner.

Special plea  
to the juris-  
diction.

The prisoner, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court consider that anything stated in such plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the prisoner and reply by the prosecutor in reference thereto.

If the court allow the special plea, they shall record their decision, and the reasons for it, and report it to the convening authority and adjourn; such decision shall *not require any confirmation*, and the convening authority shall either forthwith convene another court for the trial of the prisoner, or order the prisoner to be released.

If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and adjourn for that purpose, or may record a special decision with respect to such plea and proceed with the trial.<sup>1</sup>

General plea  
of "Guilty"  
or "Not  
guilty."

If no special plea to the general jurisdiction of the court is offered, or if such plea is overruled,

<sup>1</sup> A plea relating to the particular charge should be raised in defence, not in bar of trial. The latter is a plea to the general right of the court to try the prisoner at all. Instances of valid pleas in bar would be that the court is not properly constituted, that the prisoner is not amenable to military law.

the prisoner's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly, a plea of "Not guilty")—shall be recorded on each charge.

Before recording a plea of "Guilty," the court should ascertain that the prisoner understands the nature of the charge to which he has pleaded "Guilty," and should inform him of the general effect of that course, and in particular of the difference in the procedure which will be made by that plea.

*Procedure on Plea of "Guilty."*

R. P., 36, 37.

If the plea is guilty, the court before the finding shall receive any statement which the prisoner desires to make in reference to the charge, and if from such statement or otherwise it appears to the court that the prisoner did not understand the effect of his plea of guilty,<sup>1</sup> the court shall alter the record and enter a plea of not guilty, and proceed with the trial accordingly; but if the plea of guilty is not so altered, the court will find the prisoner guilty on the said charge. The court should receive the statement and record the finding when the findings on the

Procedure  
after plea of  
"Guilty."

<sup>1</sup> For instance, a prisoner tried for desertion might plead "Guilty," and afterwards state that he always intended to return. This would amount to a plea of "Not guilty."

other charges in the same charge-sheet are recorded.<sup>1</sup>

Alternative charges.

If there are other charges in the same charge-sheet to which the plea recorded is "Not guilty," the trial will proceed with respect to those other charges first; but if the other charges are alternative charges, the court may proceed with respect to all the charges as if the prisoner had not pleaded guilty to any charge, or may, instead of trying them, enter a finding of "Not guilty" on each alternative charge to which he has so pleaded.

"Guilty"—general or district court-martial.

If a plea of "Guilty" is recorded, and the trial does not proceed on any other charges, a general or district court-martial, after recording the finding on the plea of "Guilty," should read the summary of evidence and annex it to the proceedings, and if there is no summary of evidence, should proceed as directed below for a regimental court-martial.

After the summary or abstract of evidence is read, the prisoner may call witnesses as to his character, and may make a statement in mitigation of punishment, but no other address will be allowed.

"Guilty"—regimental court-martial.

If a plea of "Guilty" is recorded, and the trial

<sup>1</sup> After the findings on the other charges (*i.e.*, Not guilty). See Rules of Procedure, Appendix II., sec. 4.

does not proceed on any other charges, a regimental court-martial, after recording the finding on the plea of "Guilty," should take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances, connected with the offence. The prisoner may call witnesses as to his character, and may make a statement in mitigation of punishment, but no other address will be allowed.

Where the prisoner at a general, district, or regimental court-martial states anything in *mitigation of punishment* which, in the opinion of the court, requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the prisoner to *call witnesses* to prove the same.

The prisoner may, if he thinks fit, at any time during the trial withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once record a plea of "Guilty," and shall, so far as is necessary, proceed in manner already directed.

Withdrawal  
of plea of  
"Not  
guilty."

#### PROCEDURE ON PLEA OF "NOT GUILTY."

R. P., 38-41.

After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows:—

Plea of "Not guilty" and case for the prosecution.



*Prosecution.*

The prosecutor may, if he desires, make an opening address.

The evidence for the prosecution shall then be taken.

If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address, and he must be sworn, and give his evidence in detail.<sup>1</sup>

He may be cross-examined by the prisoner, and afterwards may make any statement which might be made by a witness on re-examination.

*Defence.*

Close of case for the prosecution and procedure for defence where prisoner does not call witnesses.

At the close of the evidence for the prosecution, the prisoner will be asked if he intends to call any witnesses other than witnesses as to character.

If he answers that he does not, the procedure will be as follows:—

The prosecutor may address the court a second

<sup>1</sup> Prosecutor when obliged to give evidence gives it first, because he must be present during the whole proceedings, and it is unadvisable that witnesses should be present in court while others are being examined. See also p. 119.

time, for the purpose of summing up the evidence for the prosecution.

The prisoner will be asked if he has anything to say in his defence, and may address the court in his defence.

The prisoner may call witnesses as to his character.

The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions and entries in the defaulters' book, but he may not again address the court.

If the prisoner states that he intends to call witnesses other than witnesses as to character, the procedure will be as follows:—

Defence  
where  
prisoner  
calls wit-  
nesses.

The prisoner will be asked if he has anything to say in his defence, and may address the court in his defence.

The prisoner may call his witnesses, including witnesses as to character.

After the evidence of all the witnesses for the defence has been taken, the prisoner may again address the court.

The prosecutor will be entitled to address the court in reply.<sup>1</sup>

<sup>1</sup> Above procedure put shortly comes to this—if prisoner does not call witnesses (other than to character) *he* has the *last word*; if he does call witnesses, *prosecutor* has the *last word*.

A prisoner should be allowed the utmost liberty in making his defence. Any restriction in this respect has been held fatal to the legality of the proceedings.

*Summing up.*

Summing up  
by judge-  
advocate.

The judge-advocate, if any, will, unless he and the court think a summing up unnecessary, sum up the whole case in open court.<sup>1</sup>

After the judge-advocate has spoken, no other address shall be allowed.

A. A., sec.  
54. R. P.,  
42-45.  
Considera-  
tion of find-  
ing.

FINDING.

The court will deliberate on their finding in closed court.

The opinion of each member of the court will be taken separately on each charge.

Form and  
record of  
finding.

The finding on every charge will be recorded, except in case of a special finding, simply as "Guilty," or "Not guilty," or "Not guilty, and honourably acquit him of the same."

Special find-  
ing.

Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in

<sup>1</sup> Summing up, like that of judge to jury, should be impartial; it may or may not be in writing.

the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the prisoner in his defence, they may, instead of a finding of "Not guilty," record a special finding.<sup>1</sup>

The special finding may find the prisoner guilty on a charge subject to the statement of exceptions or variations annexed to the finding.

Where the court are of opinion, as regards any charge, that the facts proved do not disclose an offence under the Army Act, the court will acquit the prisoner.

If the court doubt, as regards any charge, whether the facts proved show the prisoner to be guilty or not of an offence under the Army Act, they may refer to the confirming authority for an opinion.<sup>2</sup>

Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of not guilty on those charges; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alterna-

Finding on  
alternative  
charges.

<sup>1</sup> For example, see p. 167.

<sup>2</sup> If there is a judge-advocate present, this course should be unnecessary.

tive charges, but doubt which of those offences the facts do in law constitute, then they may either before recording a finding on those charges *refer to the confirming authority for an opinion, or they may record a special finding* stating the facts which they find to be proved, and stating that they doubt whether those facts amount in law to one charge or the other.<sup>1</sup>

*Procedure on Acquittal.*

Procedure  
on acquittal.

If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court, and the prisoner will be released.

The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted at once in the same manner as where the findings require confirmation.

*Procedure on Conviction.*

Procedure  
on conviction.

If the finding on any charge is "guilty," then, for the guidance of the court in determining, and of the confirming authority in considering the sentence, the court, before deliberating, may take

<sup>1</sup> A special finding can only apply to the *particulars* of a charge, and can in no case alter the *statement* of the offence.

evidence of, and record the prisoner's character, age, service, and rank, and the length of time he has been in arrest or in confinement on any previous sentence, and any deferred pay, military decoration, or military reward of which he may be in possession, or to which he is entitled, and which the court can sentence him to forfeit.

Evidence on the above matters may be given by a witness verifying a statement<sup>1</sup> which contains a summary of the entries in the regimental books respecting that prisoner, and identifying him as the person there referred to.

Evidence on the part of the prosecution upon the above matters should not be given by a member of the court.

The prisoner may cross-examine any such witness, and may call witnesses to rebut such evidence, and if the prisoner so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced, and if the prisoner alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

<sup>1</sup> Verbal statement as to bad character is not now admitted; the court must judge of that by the record.

R. P., 46-49.  
Q. R., sec.  
vi. para. 99  
and 101.  
Sentence.

## SENTENCE.

The court shall award one sentence in respect of *all* the offences of which the prisoner is found guilty, and such sentence shall be deemed to be awarded for the offence for which it can be legally given, and not for any offence for which it cannot be legally given.

Recommendation to mercy.

If the court make a recommendation to mercy, they shall give their reasons for such recommendation.<sup>1</sup>

Restoration of service.

If the court recommend any restoration of service under section 79 of the Army Act, the recommendation, with the reasons for it, shall be entered in the proceedings.

The number of votes by which a recommendation, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

Locality and climate are to be kept in view in awarding sentences, also previous character of prisoner, and extenuating or aggravating circumstances. Ordinarily for a first offence, sentence should be light; for lesser crimes, usually tried by district court-martial, in the case of a first conviction, a sentence should rarely exceed three months. The sentence is a matter entirely for

<sup>1</sup> See p. 86, note.

the court, and they should not be guided by any other opinion than their own. For example, the fact that the convening officer has ordered a general court-martial to try the case should not influence them.

Terms of imprisonment not amounting to six months are to be awarded in days. Terms of one or two years in years—other terms in months, or, if required, in months and days. A month in the Army Act means a calendar month, and a year twelve calendar months.<sup>1</sup>

Upon the court awarding the sentence, the president shall date and sign the proceedings, and, upon being signed by the judge-advocate, if any, they shall be at once transmitted for confirmation.

Signing and transmission of proceedings.

#### PROCEEDINGS AFTER TRIAL.

##### *Power to Confirm, Revise, Approve.*

The confirming authority in the case of a regimental court-martial is the convening officer, or the officer having authority to convene at the date of submission. In the case of a district court-martial,—an officer authorised to convene general courts-martial, or an officer authorised by

Power of confirmation, revision, approval, &c. A. A., sec. 54. Q. R., sec. vi. par. 10d.

<sup>1</sup> But in the sentence, months must be stated to be calendar months. Queen's Regulations, sec. vi. par. 101.



him to confirm district courts-martial. For general courts-martial—her Majesty or some officer deriving authority to confirm immediately or mediately from her.

A court-martial can only be revised once, it cannot receive additional evidence, nor increase its sentence on revision, nor can the confirming authority recommend an increase of sentence on revision, but he can make remarks on the inadequacy of the sentence in a separate minute, though not on the proceedings.

An acquittal does not require confirmation, and cannot be revised.

A member of a court-martial cannot confirm; in the event of a member becoming confirming officer, he must refer to a superior authority, and in a colony, to the governor.

A confirming authority may withhold his confirmation and refer to a senior officer, and in a colony where there is no senior officer to the governor.

Finding and sentence (except acquittal) are not valid unless confirmed. It follows from this, that if a finding of guilty is not confirmed, it is invalid; consequently the prisoner has not been convicted by court-martial, and can therefore be  
\* tried again for the same offence.<sup>1</sup> Sentence of

<sup>1</sup> For explanation of asterisks see p. xii.

- \* death cannot be carried out in a colony (except on active service) unless approved by the governor.

In India, sentences of death for treason or murder must be approved by the Governor-General, or the Governor of a Presidency, except the offence was committed on active service.

The same approval is required in cases of persons sentenced to penal servitude by courts-martial for civil offences in India or a colony.

The confirming authority may mitigate, remit, or commute for any less punishment, or suspend execution of sentence.

\*  
Power of suspension and execution of sentence at confirmation. A. A., sec. 57. R. P., 125.

*Powers after Confirmation.*

- \* Also after confirmation her Majesty, the commander-in-chief, the adjutant-general, or the officer commanding the district or station where the prisoner may be, the commander-in-chief in India or in any presidency, the general commanding in Ireland, and the commanding officer in any colony, may mitigate, remit, or commute, provided that the officer exercising this right is not junior to the officer who confirmed, unless he be authorised by that officer.

After confirmation. A. A., sec. 57.

A sentence by court-martial to penal servitude is made to have the same effect as the same sentence by a civil court.

Effect of sentence of penal servitude. A. A., sec. 58.

\*

R. P., 50-54.

*Procedure on Confirmation, Revision, &c.*

Procedure  
of confirm-  
ing officer.

In the case of a finding which does not require confirmation, the confirming officer shall not make any remarks in the proceedings; but if he thinks that anything in the case requires further attention, he should report to superior authority.

In the case of findings or sentences which require confirmation, the confirming authority—

- (1) may direct the re-assembly of the court for revision of the finding and sentence, or either of them, stating the reasons for such revision; and
- (2) upon receiving the proceedings, whether original or revised, may confirm or refuse confirmation, and may add any remarks on the case which such authority may think fit, and such confirmation and remarks shall be entered in and form part of the proceedings.

Procedure  
on revision.

Where the finding or sentence is sent back for revision, the court should re-assemble in closed court, and shall not receive any further evidence.

And if the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and, if such new finding involves a sentence, pass sentence afresh.

Where the sentence alone is sent back for revision, the court shall not revise the finding.

After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

The charge, finding, sentence, and confirmation of a court-martial shall be promulgated in such manner as the confirming authority may direct, or according to the custom of the service.

Promulga-  
tion.

Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall mitigate, remit, or commute the punishment awarded according as seems just.

Mitigation  
of sentence  
on partial  
confirma-  
tion.

Where one of the charges, or the finding thereon, is found to be invalid after confirmation, the authority having power to remit or commute the punishment awarded for such charges shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded accordingly.

Where a special finding has been recorded in relation to alternative charges, and the confirming authority is of opinion that the facts found

Confirma-  
tion of find-  
ing on alter-  
native  
charges.

by such special finding constitute in law the offence charged by any of such alternative charges, such authority may confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority, may declare that the finding amounts to a finding of guilty on that alternative charge; and the finding shall be a valid finding of guilty on the charge specified.

The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of such alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the prisoner is found to be guilty, the authority making the declaration, or some other authority having power to remit or commute the punishment awarded, shall remit or commute the punishment according as seems just.

*Confirmation of Informal or Excessive  
Punishment.*

If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law; and the confirming authority may confirm the finding and the sentence as so varied.

Confirmation notwithstanding informality in or excess of punishment.  
R. P., 55.

Whenever it appears that a court-martial had *jurisdiction* to try a prisoner, and that the prisoner was charged with some *offence* or offences *under the Army Act*, and was shown by legal evidence to have been *guilty* of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, *notwithstanding any deviation from the Rules of Procedure*, or any defect or objection, technical or other, *unless it appears that any injustice* has been done to the prisoner; but this is not to relieve an officer

trial after six in the afternoon, they may do so, recording in the proceedings their reason for so sitting.

In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies under his hand that it is expedient for the public service, trials may be held at any hour.

If the court, or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly, but otherwise the court should not sit on any of those days.

Q. R., sec.  
vi. par. 96.

Courts-martial will at home usually sit between 10 A.M. and 4 P.M., or between 11 A.M. and 5 P.M. A court should not sit more than six, or at most eight hours during one day. Abroad, general officers commanding will regulate hours.

Continuity  
of trial and  
adjourn-  
ment of  
court.

When a court is once assembled, and the prisoner has been arraigned, the court should continue the trial from day to day, and sit for a reasonable period on every day, unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

A court-martial, in the absence either of a

president or of a judge-advocate (if a judge-advocate has been appointed for that court-martial), shall not proceed, and if necessary shall adjourn.

The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

Any adjournment may be made from place to place, as well as from time to time.

Where a court-martial is dissolved before the finding, or in the case of a finding of guilty, before the sentence, the proceedings are null, and the prisoner may be tried before another court-martial.

A. A., sec.  
53.  
R. P., 65.

In case of the death of the prisoner, or of such illness of the prisoner as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence, and record the same, and adjourn and transmit the proceedings to the convening authority.

Proceeding  
on death or  
illness of  
prisoner.

A member of a court who has been absent while any part of the evidence on the trial of a prisoner is taken, can take no further part in the trial by that court of that prisoner, but the court will not be affected if the legal number remain.

Presence  
throughout  
of all mem-  
bers of  
court.

An officer cannot be added to a court-martial after the prisoner has been arraigned.

Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence,

Taking of  
opinions of  
members of  
court.



notwithstanding that he has given his opinion in favour of acquittal.

Every question must be decided by an absolute majority of the court.<sup>1</sup> If otherwise, a punishment might be imposed by a minority. For example, suppose four members vote for penal servitude, three for imprisonment, and two for forfeitures, the penal servitude might be imposed, although the majority (five) was against it.

The opinions of the members of the court should be taken in succession, beginning with the junior in rank.

Procedure  
on incidental  
question.

If any question should arise incidentally during the trial, the person, whether prosecutor or prisoner, requesting the opinion of the court is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

Swearing of  
court to  
try several  
prisoners.

A court may be sworn at the same time to try any number of prisoners then present before it, whether the prisoners are to be tried together or separately, and each prisoner shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

In the case of several prisoners to be tried separately, the court, upon one of those prisoners

<sup>1</sup> This includes finding and sentence, except in the case of sentence of death, p. 85 and footnote.

objecting to a member, may, according as they think fit, proceed to determine that objection, or postpone the case of that prisoner, and swear the members of the court for the trial of the others alone. .

In the case of several prisoners to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.

At any time of the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the prisoner requests it on any reasonable ground, be sworn to act as interpreter.

Swearing of  
interpreter  
and short-  
hand-writer.

An impartial person may also, at any time of the trial, if the court think it desirable, be sworn to act as a shorthand-writer.

Before a person is sworn as interpreter or shorthand-writer, the prisoner should be informed of the person who is proposed to be sworn, and may object to such person as not being impartial; and the court, if they think that such objection is reasonable, shall not swear that person as interpreter or shorthand-writer.

*General Provisions as to Witnesses.*

R. P., 74-84.

The prosecutor is not bound to call all the witnesses whose evidence is in the summary of

Calling of  
all prosecu-  
tor's wit-  
nesses.

evidence or in the abstract of evidence given to the prisoner, but he should ordinarily call such of them as the prisoner desires to be called, in order that the prisoner may, if he thinks fit, cross-examine them; and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses.

Calling of witness whose evidence is not contained in summary or abstract.

If the prosecutor intends to call a witness whose evidence is not contained in any summary given to the prisoner, notice of the intention shall be given to the prisoner a reasonable time before the witness is called; and if such witness is called without such notice having been given, the court shall, if the prisoner so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court *shall inform the prisoner* of his right to demand such adjournment or postponement.

List of prisoner's witnesses.

The prisoner shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the prisoner alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract and for whose attendance the prisoner has not requested steps to be taken.

The convening officer, or, after the assembly of

the court, the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or prisoner desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost of such attendance.

Procuring  
attendance  
of witnesses.

Any witness who is not subject to military law may be summoned to attend by order<sup>1</sup> under the hand of the convening officer, the president of the court, the judge advocate, or the commanding officer of the prisoner.

Any witness who is subject to military law shall be ordered to attend by the proper military authority.

If proper steps have not been taken as to any witness, or if any witness, whose attendance could not be reasonably procured before the assembly of the court, is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer.

Adjourn-  
ment of  
court for  
non-attend-  
ance of wit-  
nesses.

During the trial a witness, other than the prosecutor, ought not, except by special leave of the court, to be in court while not under examination; and if while he is under examination a discussion arises as to the allowance of a question, or the sufficiency of his answers, or other-

Withdrawal  
of witnesses  
from court.

<sup>1</sup> For Form, see Appendix II.

wise as to his evidence, he may be directed to withdraw.

Swearing of  
witnesses.

A witness, before he gives his evidence, shall be sworn by the judge-advocate, or by the president, or by a member of the court.

Mode of  
questioning  
witness.

Every question may be put to a witness orally by the prosecutor, prisoner, or judge-advocate, *without the intervention of the court*,<sup>1</sup> and the witness will forthwith reply, unless an objection to the question is made by the court, judge-advocate, prosecutor, or prisoner, in which case he will not reply until the objection is disposed of. The witness will address his reply to the court.

The evidence of a witness as taken down should be read to him after he has given all his evidence and before he leaves the court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and prisoner may respectively examine him respecting the same. Any material alteration should be inserted at the end, and not by way of interlineation or erasure.

Examina-  
tion and  
cross-ex-  
amination.

A witness may be examined by the person calling him, and may be cross-examined by the oppo-

<sup>1</sup> Need not now, therefore, be submitted to the president. The members, judge-advocate, prisoner, and prosecutor should attend to questions put, so as to object, if necessary, to the question before the witness replies.

site party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination.

The court may, if they think fit, allow the cross-examination of a witness to be postponed.

At any time before the time for the second address of the prisoner, the judge-advocate, also any member of the court, may, *with the permission of the court*, address *through the president* any question to a witness.<sup>1</sup>

Questions to witness by members of court or judge-advocate.

Upon any such question being answered, the president shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the prisoner, and which the court deem reasonable.

At the request of the prosecutor or prisoner, a witness may, by leave of the court, be *recalled*, at any time before the time for the second address of the prisoner, for the purpose of having any question put to him *through the president*.

Recalling of witnesses.

A witness may in *special cases* be *allowed by the court* to be *called* or recalled by the prosecutor before the time for the second address of the prisoner, for the purpose of rebutting any mate-

Calling of witnesses in reply.

<sup>1</sup> Questions by members and judge-advocate are most conveniently put after the examination-in-chief and cross-examination of the witness are concluded.

rial statement made by a witness for the defence upon his examination by the prisoner on *any new matter which the prosecutor could not reasonably have foreseen.*

In reply as  
to character.

Where the prisoner has called witnesses as to character, the prosecutor, before the time for the second address of the prisoner, may call or recall witnesses for the purpose of proving previous convictions or entries in the defaulters' book against the prisoner.

Calling of  
witnesses  
by court.

The court may call or recall any witness at any time before the finding, if they consider that it is necessary for the ends of justice.<sup>1</sup>

R. P., 93, 94.

### *Record of Proceedings.*

Record in  
proceedings  
of transac-  
tions of  
court-mar-  
tial.

At a court-martial the judge-advocate, or if there is none, the president, is responsible for the accuracy of a record of the proceedings; and if the judge-advocate is called as a witness by the prisoner, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

The evidence shall be taken down in a narrative form in as nearly as possible the words used, but in any case where the prosecutor, the pris-

<sup>1</sup> This power should only be exercised in the case of a new witness, in the event of unforeseen witnesses becoming available, or some very exceptional circumstances.

oner, the judge-advocate, or the court, considers it material, the question and answer shall be taken down *verbatim*.

Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or prisoner so requests or the court think fit, be entered with the grounds of the objection and the decision of the court thereon.

Questions  
objected to,  
how entered.

Where any address by or on behalf of the prosecutor or prisoner, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the same in the proceedings, further or otherwise than the court think proper, or in the case of the summing up, than the judge-advocate requires, except that—

Addresses,  
how entered.

- (1) the court shall in every case make such record of the defence made by the prisoner as will enable the confirming officer to judge of the reply made by or on behalf of the prisoner to each charge against him ; and
- (2) the court should also record any particular matters in the address by or on behalf of the prosecutor or prisoner which the prosecutor or prisoner, as the case may be, requires.

The court shall not enter in the proceedings

Comments  
or reports.



any comment on anything before the court, or any report of any fact not forming part of the trial, but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document signed by the president.

Custody and inspection of proceedings.

The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and prisoner respectively, at all reasonable times before the court is closed to consider the finding.

#### *Loss of Proceedings.*

Loss of proceedings.  
R. F., 98.

If the original proceedings of a court-martial or any part thereof are lost, a copy, certified by the president of, or the judge-advocate at, the court-martial, may be accepted in lieu of the original.

If there is no such copy, and sufficient evidence<sup>1</sup> of the charge, finding, sentence, and transactions of the court can be procured, that evi-

<sup>1</sup> Sufficient evidence may be obtained by some member of the court writing out from memory the substance of the transactions, which should be signed by the other members. A copy of the charge should, however, be procured from the officer who framed it.

dence may, with the assent of the prisoner, be accepted in lieu of the original proceedings or part thereof lost.

In either case, the finding and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings or part thereof had not been lost.

If, in a case where confirmation is required, the proceedings or part thereof were lost before confirmation, and there is no such copy or evidence, or the prisoner refuses such assent as above-mentioned, the prisoner may be tried again; and on the issue of an order convening the court for such trial, the said finding and sentence of the previous court of which the proceedings or part thereof were so lost shall be null.

*Transmission of Proceedings, Custody, and  
Time preserved.*

R. P., 95, 96.  
Q. R., sec.  
vi. para. 108-  
111.

Proceedings of general courts-martial are transmitted at home by the officiating judge-advocate to the judge-advocate-general for confirmation by her Majesty,—abroad, to the general or other officer having power to confirm, or if such officer has not power to confirm from any cause, he will forward proceedings to the judge-advocate-general in London. If he has confirmed, he will

Transmis-  
sion of pro-  
ceedings,  
&c., general  
courts-mar-  
tial.

forward the proceedings as soon as possible after promulgation to the judge-advocate-general. Date of promulgation, when not submitted to her Majesty, should be recorded on proceedings, which should be accompanied by a covering letter specifying contents. After promulgation the proceedings are kept at least seven years in the office of the judge-advocate-general or Admiralty.

District  
courts-mar-  
tial.

Proceedings of district courts-martial, after confirmation and promulgation, are returned to the staff officer of the district, who will make any necessary communication respecting them to the president and judge-advocate (if any) for their information. The general will then transmit them without delay to the judge-advocate-general in London, or India, or to the Admiralty, where they are preserved for not less than three years.

Regimental  
courts-mar-  
tial.

Proceedings of regimental courts-martial, after entry in regimental books, and after they have been laid before the inspecting general officer at the next annual inspection, are to be forwarded to the depôt, to be kept there three years.

A. A., secs.  
49, 54.  
R. P., 103.  
Field gen-  
eral courts-  
martial.

#### FIELD GENERAL COURTS-MARTIAL.

A field general court-martial, formerly called a detachment general court-martial, has the powers

of a general court-martial. Members not less than three. Convening officer may preside; but, if practicable, he must appoint another president, who may be of any rank, but if possible not under that of captain. Members.

A field general court-martial can only try offences against the property or person of any resident of the country in which the detachment of troops is serving beyond the seas. Jurisdiction.

If impracticable to assemble an ordinary court, any officer *in command* of any detachment abroad can convene a field general court-martial to try such offences, on complaint being made to him. Convening.

Sec. 48, Army Act,<sup>1</sup> does not apply to field general courts-martial; but sentence of death is not legal unless all members concur. The restriction placed upon courts-martial, as regards trial of certain civil offences,<sup>2</sup> does not apply to field general courts-martial.

Sentence cannot be executed until confirmed by an officer authorised to confirm general courts-martial, in the force of which the detachment under command of the convening officer forms part. Confirmation.

The following officers only are ineligible to Disqualification of members.

<sup>1</sup> Refers to rank of president and members.

<sup>2</sup> See p. 32.

serve on a field general court-martial—prosecutor, witness for prosecution, one who has a personal interest in the case.<sup>1</sup>

The rules of procedure for general courts-martial apply to field general courts-martial, with the following exceptions:—

The interval between the prisoner's being informed of the charge and his arraignment shall, when the ordinary rule cannot be complied with, be as long as practicable.

The summary of evidence is not required to be taken by commanding officer.

The rule that five members are to be of rank not below captain, does not apply.

Proceedings to be dealt with and kept in the same way as a district court-martial.

Judge-advocate not required, president may perform his duties.

On plea of guilty, the court proceed as in the case of a regimental court-martial.

Certain other rules (13, 38, 39, 40, 63, Rules of Procedure), as regards minor points, are to apply only so far as appears to the convening officer to be practicable.

<sup>1</sup> These disqualifications are made by Rules of Procedure, 103, not by the Army Act. See note, p. 112.

## SUMMARY COURTS-MARTIAL.

A summary court-martial may be convened on active service by a commanding officer, or by an officer in immediate command of a portion of a body of forces, when the convening officer is of opinion that an ordinary court cannot be assembled.<sup>1</sup> Sections 50 to 54 Army Act do not apply to summary courts-martial. To consist of not less than three members, unless three are not available, then two; but, in the latter case, power of punishment is limited to summary punishment and imprisonment.

Summary courts-martial. A. A., sec 55.

Convening

Members,—qualifications and disqualifications of.

The rules of procedure for other courts-martial do *not* apply generally to summary courts-martial, which are subject to the following rules :—

R. P., 104-122.

Where the convening officer is below the rank of field-officer, and is not a commanding officer, he should delay the trial for reference to a superior officer, unless such course is impracticable.

Convening,

If the convening officer is of opinion that three other officers are not available to form the court, he may appoint himself president; but, if possible, he should appoint another officer to be

Members,—number and qualifications of.

<sup>1</sup> On complaint or otherwise that a person amenable to military law has committed an offence.

president, who may be of any rank, but should not be below the rank of captain, unless an officer of that or higher rank is not available.

The officers should have held commissions for not less than one year, and if any officers are available who have held commissions for not less than three years, they should be appointed.

Disqualified  
members.

The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed members of the court, but any other available officers may be appointed to sit.<sup>1</sup>

Record of  
proceedings.

The court may be convened and the proceedings of the court recorded in accordance with the form;<sup>2</sup> but where it appears to the convening officer that military exigencies or other circumstances prevent the use of such form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable must be kept by the provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating, as near as may be, the particulars set forth in the form, and recording at least the name (or, if the name is not known, the

<sup>1</sup> These disqualifications are made by Rules of Procedure, 105, not by the Army Act. See note, p. 112.

<sup>2</sup> See p. 134.

description) of the offender, the offence charged, the finding, the sentence, and the confirmation.

The statement of an offence may be made Charge. briefly in any language sufficient to describe or disclose an offence under the Army Act.

The court may be sworn at the same time to Trial of several prisoners. try any number of prisoners then present before it, but, except so far as prisoners are tried together for an offence committed collectively, the trial of each prisoner will be separate.

If any prisoner objects to an officer, and any Challenge. member of the court thinks the objection reasonable, steps will be taken to try the prisoner before a court composed of officers against whom he has no reasonable objection.

When the court are sworn, the president will Arraignment. state to the prisoner then to be tried the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the prisoner whether he is guilty or not of the offence.

If a special plea to the general jurisdiction is Plea to jurisdiction. offered by the prisoner, and is considered by the court to be proved, the court shall report the same to the convening officer.

The witnesses for the prosecution will be Witnesses. called, and the prisoner will be allowed to cross-



examine them, and to call any available witnesses for his defence.

Sentence.

The court, if consisting of three or more officers, may sentence to any punishment which a general court-martial can award; but if the court pass sentence of death, the whole court must concur.

If after the commencement of the trial the court consider that any prisoner named in the schedule to the order convening the court should be tried by an ordinary court-martial, the court may strike the name of that prisoner out of the schedule.

Confirmation.  
R. F., 119.

Conviction is not valid unless confirmed. Subject to several *exceptions*, the confirming officer may be any general, field, or commanding officer, or officer in command of a detachment with which the prisoner is present. But in the last case the officer must, if practicable, reserve the confirmation for superior authority; also if the punishment exceeds that which a regimental court-martial can award, the confirming officer, should he not have power to confirm general or district courts-martial, must reserve confirmation for an officer having that power: he may, however, commute the punishment to make it one within his own power.

Summary  
courts-

*Exceptions.* — These cannot confirm: provost-marshal or assistant, prosecutor, or member of

the court-martial; but in the case of a member who has otherwise (under Rules of Procedure) power to confirm, and he considers it impracticable to delay, he may confirm.

martial con-  
firmation.

A sentence of death or penal servitude cannot be carried out until confirmed by a general, or field officer, commanding the forces with which the prisoner is serving; and if the confirming officer is not in *chief* command, he is bound to reserve the sentence for confirmation by superior, except when he considers delay impracticable.

A. A., sec.  
55.  
R. P., 119.

Any officer may, if he thinks it desirable, reserve finding or sentence for confirmation by superior.

An officer not having power to confirm district courts-martial cannot commute summary punishment into imprisonment exceeding forty-two days.

The rest of the proceedings of summary courts-martial, not mentioned above, follow generally the ordinary rules.

The summary court-martial, first called so in 1881, is a substitute for the old power of the provost-marshal to inflict punishment on his own authority.

# FORM FOR ASSEMBLY AND PROCEEDINGS OF A SUMMARY COURT-MARTIAL.<sup>1</sup>

## PROCEEDINGS.

<sup>2</sup> At \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

A. Order  
convening  
the court.

Whereas it appears to me that the persons named in the annexed schedule and being subject to military law have committed the offences in the said schedule mentioned, and I, the undersigned, an officer now in command of

on active service, am of opinion that it is not practicable, having due regard to the public service, to convene an ordinary court-martial to try such offences [<sup>3</sup>or to delay the trial for reference to a superior qualified officer], I hereby convene a summary court-martial to try the said persons, and to consist of

## PRESIDENT.

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
_____	_____	_____

## MEMBERS.

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

[<sup>4</sup>I am of opinion that three officers are not available, having due regard to the public service.]

(Signed) \_\_\_\_\_

<sup>1</sup> For Rules about summary punishment, see chap. ii. p. 38.

<sup>2</sup> State the place.

<sup>3</sup> Omit except where convening officer is not a commanding officer, and is below rank of field-officer.

<sup>4</sup> Omit except where the court-martial consists of two officers only.

I certify that the above court assembled on the day of \_\_\_\_\_ and duly tried the persons named in the said schedule, and that the plea, finding, and sentence in the case of each such persons were as stated in the third and fourth columns of that schedule.

B. Certificate of president as to proceedings.

Signed this \_\_\_\_\_ day of \_\_\_\_\_  
C— D—

\_\_\_\_\_  
President of the court-martial.

I have dealt with the findings and sentences in the manner stated in the last column of the above schedule, and subject to what I have there stated, I hereby confirm the above findings and sentences, and I am of opinion, with reference to the sentences of summary punishment mentioned in the schedule, that imprisonment cannot, with due regard to the public service, be carried into execution [and I am of opinion that it is not practicable, having due regard to the public service, to delay the cases for confirmation by any superior qualified authority].

C. Confirmation.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
E— F—

\_\_\_\_\_  
Field [or General] Officer in the force [or commanding \_\_\_\_\_].

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

D. Confirmation of reserved sentences.

Signed this \_\_\_\_\_ day of \_\_\_\_\_  
G— H—

\_\_\_\_\_  
General [Field] Officer in the Force.

Subject to what I have stated in the last column of the

<sup>1</sup> Omit excepting where under rules it is ordinarily the duty of the confirming officer to reserve the case.

E. Confirmation of sentence of death or penal servitude.

schedule, I hereby confirm the [finding and] sentence of death in the case of \_\_\_\_\_ and \_\_\_\_\_, and of penal servitude in the case of \_\_\_\_\_ [1 and in the case of the above sentences of death I am of opinion that by reason of 2 \_\_\_\_\_ it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself].

Signed this \_\_\_\_\_ day of \_\_\_\_\_ .  
J— K—

General [Field] Officer in chief command  
of the forces.

<sup>1</sup> Omit where confirmed by officer in chief command.

<sup>2</sup> State, according to the circumstances, the nature of the country, or the great distance, or the operations of the enemy.

## COURTS-MARTIAL.

137

## SCHEDULE.

Date	18 .	No.		
Name of alleged Offender. <sup>1</sup>	Offence charged.	Plea.	Finding, and if convicted, Sentence. <sup>2</sup>	How dealt with by confirming Officer.
Peter Smith (sutler).	Offence against person of inhabitant of country.	Guilty.	Guilty. Field imprisonment No. 1 for .	Confirmed. I remit E— F—
262, Private James Robinson, 167th Regt.	Breaking into house in search of plunder.	Not guilty.	Guilty. Two months' imprisonment.	Not confirmed. E— F—
564, Private Thomas Jones, 167th Regt.	Drunk on post.	Not guilty.	Guilty. Death. Recommended to mercy.	Reserved [or confirmed, but commuted to field imprisonment No. 1 for 1 E— F— Confirmed, but commuted to years' penal servitude. J— K—
Person accompanying force (name unknown), white jacket and trousers, scar on right cheek.	Impeding provost - marshal.	Not guilty.	Not guilty.	
Soldier in uniform of 167th Regt. (name unknown).	Offence against property of inhabitant of country.	Not guilty.	Guilty. Field imprisonment No. 2 for .	Reserved. E— F— Confirmed. G— H—
P— Q— Convening Officer.		C— D— President.		

<sup>1</sup> If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.

<sup>2</sup> Recommendation to mercy to be inserted in this column.

R. P., 123.      The expression "commanding officer," as used in regard to courts-martial, means in relation to any person the officer whose duty it is under regulation or custom to deal with a charge against that person—that is, to dispose of it himself, or refer it to a superior.

## CHAPTER V.

*GENERAL PROVISIONS AS TO COURTS-MARTIAL,  
EXECUTION OF SENTENCES, DESERTERS, &c.*

*Appointment and Special Duties of President.*

THE convening officer must appoint the president. It is sufficient to appoint him by name in the order of assembly; the warrant formerly required in the case of a general court-martial is now dispensed with.

President.  
R. P., 58.

The president is responsible for the trial being conducted in proper order and in accordance with the Army Act and the Rules of Procedure, and will take care that everything is conducted in a manner befitting a court of justice.

Responsi-  
bility of  
president.

It is the duty of the president to see that justice is administered, and that the prisoner has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a prisoner, or of his ignorance, or of his incapacity



to examine or cross-examine witnesses or otherwise.

*Appointment and Special Duties of Prosecutor.*

Prosecutor.  
R. F., 24,  
59; Q. R.,  
sec. VI. p.  
92.

The duty of appointing the prosecutor devolves on the convening officer, who, on the trial of a soldier, ordinarily selects the adjutant; but in complicated cases a prosecutor should be specially selected for his experience and knowledge of military law.

It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the prisoner.

Power of  
court over  
address of  
prosecutor  
and prisoner.

The court may stop the prosecutor in referring to any matter not relevant to the charge then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

The court should allow great latitude to the prisoner in making his defence: he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting

language towards others; but he may, for the purpose of his defence, impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability to further proceedings to which he would otherwise be subject. The court may caution the prisoner as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of such irrelevance.

The prosecutor should bring all the facts of the case fully before the court in evidence. He should take care, especially when the prisoner is unassisted in his defence, that no material fact in connection with the offence is omitted which would tell in favour of the prisoner. Although drunkenness is no excuse, still, if the prisoner was drunk when he committed the offence, and he is not charged with drunkenness, the prosecutor should bring this fact out in evidence.

The prisoner cannot object to the prosecutor, R. P., 25, 24. who must, however, be a person subject to military law. If the prosecution is instituted by a civilian, the latter may be in court to assist the prosecutor, but he cannot take part or assist himself in the prosecution unless he is a coun-

sel, in which case he has all the rights and duties of the prosecutor.

The prosecutor, as we have seen, cannot be a member of the court, nor act as judge-advocate.<sup>1</sup> He may be a witness for the prosecution, in which case he gives his evidence first. He may also be a witness for the defence. He may be present during the preliminary proceedings of the court, but he has no status before the court until after these proceedings, when he takes his place. Prosecutor is entitled to the opinion of the judge-advocate on any question of law relative to the charge after the judge-advocate is appointed.

*Appointment and Special Duties of Judge-Advocate  
at a Court-Martial.*

\* A judge-advocate is required for every general court-martial, and may also be appointed for district courts-martial. A convening officer cannot appoint a judge-advocate unless specially authorised to do so. At home, when one of the three deputy judge-advocates from London cannot conveniently attend a general court-martial, the judge-advocate-general appoints by warrant an officer to officiate. Invalidity of appointment

Judge-advocate.  
R. F., 25, 99,  
100, 101, 103,  
93, 94.

<sup>1</sup> Formerly the judge-advocate used to assist in the prosecution. This is now prohibited by statute. (Clode.)

\* does not invalidate proceedings if a fit person has been appointed. An officer disqualified for sitting as a member is also disqualified as judge-advocate. A field general court-martial does not require a judge-advocate. Presence of judge-advocate is necessary throughout proceedings, even when court is closed; the court should not proceed in his absence. The court on assembly must satisfy themselves as to judge-advocate's due appointment and qualifications; the warrant appointing is read in court. The prisoner cannot object to the judge-advocate. If the judge-advocate dies, or is unable to attend, the proper authority can appoint a substitute. Witnesses may be summoned by the judge-advocate, who may also be called as witness in defence. A counsel may be appointed to assist the judge-advocate. The judge-advocate is sworn<sup>1</sup> by one of the members after he has administered the oath to the court.

The powers and duties of a judge-advocate are as follows:—

Powers and duties of judge-advocate.  
R. F., 101.

The prosecutor and the prisoner respectively are, at all times after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out

<sup>1</sup> Special Oath, see Appendix II.

- \* of court, subject, when he is in court, to the permission of the court.<sup>1</sup>

At a court-martial he represents the judge-advocate-general.

He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge or in the constitution of the court, and will give his advice on any matter before the court.

Any information or advice given to the court on any matter before the court will, if he or the court desires it, be entered in the proceedings.

At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence, and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.

Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not overrule it except for very weighty reasons. The court are responsible for the legality of their decisions, but they must

<sup>1</sup> For explanation of asterisks, see p. xii.

- \* consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The court in following the opinion of the judge-advocate on a legal point may record that they have decided in consequence of that opinion.

The judge-advocate has, equally with the president, the duty of taking care that the prisoner does not suffer any disadvantage in consequence of his position as prisoner, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may for that purpose, with the permission of the court, call witnesses and put questions to witnesses which appear to him necessary or desirable to elicit the truth.

In fulfilling his duties, the judge-advocate will be careful to maintain an entirely impartial position.

#### *Judge-Advocate-General.*

The judge-advocate-general is a Privy Councillor, usually a member of Parliament, and one of the Ministers of the day. He is the legal adviser of the Sovereign, and the commander-in-chief. He advises on charges proposed for trial by court-martial, so that no accusation should be

- \* preferred which cannot be maintained. He advises also as to the legality of proceedings of courts-martial and their sentences, and is the custodian of the records of general and district courts-martial. He lays the proceedings of general courts-martial held in the United Kingdom before the Sovereign for her confirmation or otherwise. His office cannot be called a court of appeal, but rather a court of review. Although every trial by court-martial (except regimental) is reviewed in his office, and he practically exercises in the name of the Sovereign the power of annulling any sentence not in accordance with law or any illegal conviction, yet there is no appeal, in the proper sense of the word, from a court-martial. The custom of the civil courts is not to interfere so long as there is no question of the jurisdiction of the court-martial.

A. A., sec.  
129.  
R. P., 85-92.  
Counsel.

*Position of Counsel at Courts-Martial.*

Conduct of counsel that would be liable to censure, or a contempt of court before a civil court, is to be deemed the same before a court-martial. The rules for court-martial and for the guidance of counsel are binding on them at courts-martial, and any wilful disobedience is contempt of court. When a counsel is guilty of the above offence, the president can certify the same to a court

\* of law, which is bound to deal with the case as if committed against itself. A court-martial may, by order of the president, remove a counsel from the court, but in such case the president must certify the offence to a court of law.

A prisoner may have a person to assist him during the trial, whether a legal adviser or any other person.

Prisoner may have a person to assist him on trial.

A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses, and if an officer subject to military law, shall have the same rights and duties as counsel have under the Rules of Procedure, and the right of the prisoner shall be limited in like manner.

Counsel are allowed to appear on behalf of the prosecutor and prisoner at general courts-martial:

Counsel allowed in certain general courts-martial.

- (1) When held in the United Kingdom; and
- (2) When held elsewhere, if the commander-in-chief, or the convening officer, declares it expedient.

Prisoner or prosecutor must give seven days' notice (or less, if the court allow) of intention to have counsel, in order to enable the opposite party to get counsel also. Counsel may also be appointed to assist the judge-advocate.

A counsel who appears before a court-martial



- \* on behalf of the prosecutor or prisoner, shall have the same right as the prosecutor or prisoner for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with Rules of Procedure as if he were that person; and in such case that person shall not have the right himself to do any of the above matters, except as regards the statement allowed by a rule following, or except so far as the court permit him so to do.

When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness.

Counsel for  
prosecution.

The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the prisoner, and the nature and general effect of the evidence which he proposes to adduce in support of it, without entering into unnecessary detail.

He shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the same manner.

- \* The counsel for the prisoner has the like rights, and is under the like obligations as have been specified in the case of the prisoner. Counsel for prisoner.

If the court ask the counsel for the prisoner a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

Counsel, whether for the prosecution or for the prisoner, will conform strictly to Rules of Procedure and to the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel. General rules as to counsel.

If a counsel puts to a witness a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it; and

- (1) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but
- (2) If they are of opinion that the impu-

- \* tation, if true, would not affect their opinion as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further commenting on the matter.

Counsel will not state as a fact any matter which is not proved or which he does not intend to prove in evidence, nor will he state what is his own *opinion* as to any matter of fact before the court.

Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

Counsel will treat the court and judge-advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the prisoner who may attend as a witness.

Qualifica-  
tions of  
counsel.

Neither the prosecutor nor the prisoner has any right to object to any counsel, if properly qualified.

A counsel is properly qualified—

- \* 1) If in England or Ireland he is a barrister-at-law ;
- (2) If in Scotland he is an advocate ;
- (3) If in India he is a barrister-at-law or advocate ;
- (4) If in any other part of her Majesty's dominions, he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England, and as being subject to punishment or disability for a breach of professional rules.

A prisoner assisted by counsel, or by an officer subject to military law, may, if he thinks fit at the close of the case for the prosecution, and before the address by such counsel or officer, make any statement giving his own account of the subject of the charges against him, but such statement must be made orally, as if he were a witness, except that he must not be sworn, and that no question can be put to him by the court or by any person.

Statement  
by prisoner  
defended by  
counsel or  
officer.

If the prisoner makes such a statement, the procedure will, so far as possible, be the same as if the prisoner had called witnesses other than witnesses as to character,—that is to say, the prosecutor will make his second address after the defence is finished.

\*

*Provost-Marshal.*

Provost-  
marshal.  
A. A., sec.  
74.  
Q. R., sec.  
vi. par. 116,  
117.

The provost-marshal is now reduced to the position of an executive officer, and has *no* authority whatever to inflict punishment himself. He can arrest and detain offenders for trial, and may carry into execution punishments of courts-martial. A provost-marshal will be a commissioned officer, and the principal provost-marshal of a force on active service should be a field-officer.

*Execution of Sentences.*

Penal servi-  
tude.  
A. A., sec.  
58.  
R. P., 125 ;  
Q. R., sec.  
vi. p. 157-  
161.

At home.

In the United Kingdom an offender is to be transferred to a penal servitude prison as soon as practicable. The civil prison is named by the general commanding the district; and the order of the committing authority, who is the commanding officer of the prisoner, or higher prescribed authority, is sufficient warrant. The convict can also be discharged by order of the discharging authority, who is the officer commanding the district, or higher prescribed authority, before arrival at the prison.

Abroad.  
A. A., sec.  
60, 61, 6  
131.

In India, or in any colony or foreign country, the convict must as soon as practicable be transferred to a penal servitude prison in the United Kingdom, except the following persons, who, for

\* manifest reasons, are exempted — viz., Asiatics and Africans, other persons of colour, persons born and domiciled out of the United Kingdom, persons enlisted for the Malta Fencibles, or for any Indian or colonial corps.

The order of the committing authority, who is the officer commanding the district or station, or higher prescribed authority, is sufficient warrant for transfer to a penal servitude prison. The convict may be kept in civil or military custody, and transferred from one to the other, till sent to a penal servitude prison, by order of the removing authority, who is the same official as the committing authority.

Penal servitude prison means a prison where persons sentenced to penal servitude by civil court can be confined.

Authorised prison, in relation to penal servitude, means a prison in India, or in a colony, authorised by the Governor and Secretary of State for military convicts.

Imprisonment by commanding officer or court-martial may be carried out either in a military or in a public prison: the order of the committing authority, who is the commanding officer of the prisoner, or higher prescribed authority, is sufficient warrant. The general commanding names the prison. A prisoner may be removed from

Execution  
of imprisonment.  
A. A., sec.  
63-67.

- \* prison to prison, but cannot be taken out of the United Kingdom to be imprisoned elsewhere. The proper military authority may also by order remove a prisoner from a public prison in order to bring him before a court-martial or civil court, either as a prisoner or witness. The officer who has power to remove is the committing authority or other prescribed officer. Also the following persons (called discharging authorities) may by order, at any time, discharge a prisoner—viz., the officer commanding the district, or higher authority; the officer who confirmed the sentence; and the commanding officer of the prisoner, when the sentence has been passed by him.

Public prison means, in the United Kingdom, a prison in which offenders sentenced by civil court can be confined; in India, or in a colony, any prison authorised by the Governor and Secretary of State.

An offender sentenced in India, or in a colony, to over one year's imprisonment must be sent home to undergo punishment, unless he belongs to one of the exempted classes mentioned above, or unless the court or the confirming officer order otherwise. Should the court do so, the necessary order should form part of the sentence.

Power is now given to a competent military

- \* authority to remove prisoners in custody for the purpose of foreign service, the object being to give offenders an opportunity of recovering their characters by being removed from the temptations of home service to foreign stations. No authority, however, is given to commit such offenders to prison on arrival at the foreign station.

Removal to foreign station. A. A., sec. 67.

The competent authority to do this is, in the United Kingdom, the commander-in-chief or the adjutant-general, and in Ireland, the commander-in-chief there; in India, the commander-in-chief or commander-in-chief of a presidency, the adjutant-general or the adjutant-general of a presidency; in a colony, the officer commanding; in any case, the prescribed officer.

\*

The term of penal servitude or imprisonment commences, in *all* cases, whether the prisoner is already under sentence or not, from the date of the president's signature. Courts-martial cannot now give cumulative punishments, and no offender can suffer imprisonment for more than two consecutive years. Example—Supposing the court desire to impose a fresh sentence of imprisonment (say four months) on a prisoner who is already in prison under sentence of six months, of which two months are unexpired, the court must impose a sentence of six months; and similarly with respect to sentences of penal servitude.

Commencement of term of penal servitude and imprisonment. A. A., sec. 68.



A soldier sentenced to penal servitude undergoes his sentence in a civil prison, and his discharge from the army is proceeded with at once.<sup>1</sup>

\* A soldier sentenced to imprisonment, who is not to rejoin his corps at the termination of his punishment, is committed to a civil gaol if his offence is one of an immoral, dishonest, or criminal character; but if his offence constituted a breach of discipline only, he is dealt with in the same manner as if he had to rejoin his corps,—that is to say, he may be committed to a civil or to a military prison. In either case, his discharge from the army is carried out at once.

Q. R., sec.  
xix. para.  
230, 222-224;  
and sec. vi.  
para. 162,  
163, 172.

Sentence of imprisonment not exceeding forty-two days may be undergone in a provost prison; and a prisoner may be committed, by order signed by his commanding officer, for temporary detention, not exceeding seven days, to any prison, police station, or lock-up in which prisoners may legally be confined.

A. A., sec.  
132.  
Q. R., sec. vi.  
para. 162,  
172.

The Secretary of State is empowered to classify prisoners, it being considered right that clear difference should be made between the treatment of soldiers convicted of breaches of discipline and

A. A., sec.  
135.

<sup>1</sup> This does not prevent a court-martial from sentencing a soldier to discharge with ignominy in addition to penal servitude or imprisonment under Army Act, 44; in practice this is usually done to mark the offence with disgrace.

\* those convicted of immoral, dishonest, or criminal conduct.

\*

The expression "commanding officer," as used in regard to execution of sentence, means, in relation to any person, the officer whose duty it is, under regulation or custom, to dispose of a charge against that person, or to refer it to a superior. R. P., 128.

*Apprehension of Persons suspected of being Deserters.*

Any constable or officer or soldier may apprehend a suspected person on reasonable suspicion that he is a deserter, and bring him before a court of summary jurisdiction, which may deal with him; and if satisfied that he is a deserter, may deliver him up to military custody, or send him to prison until he can be so given up—sending a descriptive return to the Secretary of State if at home, or to the officer commanding if abroad. If the person confesses desertion, and there is no evidence forthcoming, the court may remand him, transmitting the descriptive return as above; and the remand may be extended, not exceeding eight days in each instance.

Apprehension of deserter. A. A., sec. 154.

*Confession of Deserter.*

When a soldier confesses desertion or fraud-

Confession of desertion. A. A., sec. 73.

ulent enlistment, a competent authority<sup>1</sup> may, instead of trial, order the same forfeitures and deductions from pay as if he had been convicted by court-martial. And if evidence cannot be conveniently obtained, record is to be entered in regimental books, and the soldier is to continue to do duty in his own or any corps until discharged or transferred to the reserve, or until legal proof can be obtained.

*Regulations as to Deserters.*

Q. R., sec.  
vi. para. 126,  
127, 128, 131.

If a deserter surrenders himself to his own corps, and evidence of identification is immediately available, he may be taken into military custody, and the commanding officer reports at once to the adjutant-general, or abroad to the general commanding. Also, if a man in uniform surrenders himself to a corps other than his own, and there is ground for supposing his confession true, he may be taken into military custody.

Commanding officers are to send descriptive returns of absentees and suspected deserters to the 'Police Gazette,' also to the parish to which the deserter belongs, and to the police of the locality where the offence was committed.

<sup>1</sup> The commander-in-chief or the adjutant-general; in India the commander-in-chief or the commander-in-chief of any presidency; in a colony or elsewhere, the general commanding.

At foreign stations, when a confession of desertion appears true, and no sufficient evidence is obtainable, the general commanding may order the man to serve in his own corps, or in a corps at the station, or discharge him with a protecting certificate if unfit to serve.

When a soldier is discovered while serving to be a deserter, or to have improperly re-entered the army, his commanding officer transmits the prescribed particulars on Army Form 123 to the commanding officer of the soldier's former corps, who answers the questions and returns the form, which is then forwarded to the adjutant-general at home, or the general commanding abroad.

For further details, see Queen's Regulations, sec. vi. part iv.

### *Insanity.*

If a court-martial considers a prisoner unfit for trial by reason of insanity, or believes that the prisoner committed the crime charged, but that he was insane at the time,—they must find specially either of those facts, and the president shall date and sign the finding; and the proceedings upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

If such finding is not confirmed, the prisoner may be tried by the same or another court-

*Insanity.*  
A. A., sec  
130.  
R. P., 56.

martial for the offence with which he was originally charged.

Where such finding is confirmed, then, until the directions of her Majesty are known, the prisoner shall be confined in such manner as may be best calculated to keep him securely, without unnecessary harshness, as he is not to be considered as a criminal, but as a person labouring under a disease.

*Restitution of Stolen Property.*

\* When a person has been convicted by court-martial of having stolen, or unlawfully obtained any property, the confirming authority may order the property to be restored to the apparent owner ; also, if the property has been exchanged, he may order the thing exchanged to be given up. Further, if the property has been pawned or sold to an innocent party, the latter may recover from the prisoner's property on an order from the confirming authority.

Stolen property.  
A. A., sec.  
75.

\*

*Conviction of Less Offence permissible on Charge of Greater.*

A person charged with stealing may be found guilty of embezzlement or of fraudulently misapplying ; and a prisoner charged with embezzle-

Conviction of less offence permissible on charge of greater.  
A. A., sec.  
56.

ment may be found guilty of stealing or fraudulently misapplying.

A prisoner charged with desertion may be found guilty of attempting to desert, or of absence without leave; and a prisoner charged with attempting to desert may be found guilty of desertion, or of absence without leave.

For any other offence a prisoner can, on failure of proof of the offence involving a higher punishment, be convicted of the same offence involving a less punishment.

For example, a man charged with striking a superior officer *in the execution of his office*, may be convicted of striking his superior officer; and a man charged with an offence committed on active service, may be found guilty of the same offence committed not on active service. (See p. 165.)

### *Copy of Proceedings of Court-Martial.*

Any person tried by court-martial can obtain a copy of the proceedings on demand—in the case of a general court-martial within seven years, and any other court-martial within three years of the trial—upon payment at the rate of twopence for seventy-two words.

Copy of proceedings of court-martial.  
A. A., sec. 124.

Every witness may be summoned or ordered

Witness  
summoned  
or ordered.  
A. A., sec.  
125.

to attend a court-martial, and is free from arrest in going to and returning from the same as if attending a civil court.

*Extension of Furlough.*

Furlough  
(sickness).  
A. A., sec.  
173.

If a soldier is detained by sickness or other casualty from rejoining from furlough, and if there is no officer of the rank of captain or higher rank at his station, a justice of the peace may grant an extension of one month; and he must certify the same to the soldier's commanding officer, who may, however, recall the soldier to duty, in which case the furlough is cancelled.

## CHAPTER VI.

*EVIDENCE.*

THE rules of evidence are the rules which regulate the mode in which questions of fact may be determined for judicial purposes.

"Rules of evidence."

The rules of evidence to be followed by courts-martial are to be those adopted in civil courts in England; and courts-martial are to be governed by English law only, and not by the Indian Evidence Act.

Same rules for military as for civil courts. English law only. A. A., secs. 127, 128; and R. P., 72.

Although courts-martial are perhaps less subject to technical trivialities than civil courts, still the same broad rules apply to both. Those rules have been described as "the result of the accumulated experience of able lawyers of the most correct mode of arriving at the truth." They prevent much irrelevant matter being introduced. The chief authorities on courts-martial agree that the rules of civil law should be strictly adhered to, except in minute details. The same principles



hold good, but there is not the same strictness in minutiae in the military courts. The legality of evidence may often be the turning-point in a trial: it is therefore important that officers should have a good general knowledge of the principles on which such evidence should be accepted or rejected. On courts-martial, where a judge-advocate is appointed, it is his duty to advise the court as to the legality or otherwise of evidence. Evidence is chiefly guided by judge-made rules, but there are also statutes relating to it; for example—secs. 72, 163, 164, 165, Army Act, 1881, which make certain documents legal evidence. (See p. 178.)

The rules of evidence are to be found in the ordinary text-books on the subject. A limited number of them are applicable to courts-martial. We only propose to shortly notice here those mentioned in the syllabus of examination, Queen's Regulations, 1883.

#### WHAT MUST BE PROVED.

Charge  
brought  
must be  
proved.  
Manual of  
Military  
Law.

What must be proved, in order to convict, is the charge brought. Every charge alleges a specific offence, constituting a breach of some section of the Army Act or other statute. As a general rule, subject to certain exceptions, it is of this

offence alone that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to answer a charge for which he is not prepared. And the exceptions will be found not to conflict with this reason, since they relate either to cases where the distinction between the offences is mainly technical, or to cases where the distinction is one of degree, but not of kind, and the prisoner, having been charged with the more serious, is allowed to be convicted of the less serious offence. Examples, sec. 56, Army Act; see chap. v. p. 160. Exceptions.

A court-martial cannot, however, find a prisoner guilty of an attempt if the full offence is not proved—although this can be done in a civil court. Sec. 56 (5) has been erroneously interpreted as giving this power; but it merely provides that, on failure of proof of an offence committed under circumstances involving a higher degree of punishment, the prisoner may be convicted of the *same offence*, as being committed under circumstances involving a less degree of punishment. The intention appears to be only to empower a court, when an offence is charged as having been committed on active service, or in other circumstances thereby involving a higher punishment (for instance, striking a superior *in the execution of his office*), to find that it has been

committed, not on active service, or not in those circumstances, as the case may be. The subsection appears to be superfluous, as a special finding would meet the case.<sup>1</sup> In practice it will usually be preferable, when there is any doubt before the trial, to prefer alternative charges.

Substance  
only need  
be proved.

It is the *substance* of the charge *only* that need be proved. Allegations, not essential ingredients of the offence, may be rejected as surplusage. Variances in the charge in mere technical details do not invalidate proceedings, unless they are the very points at issue. For instance, a mistake in the name or description of the prisoner would not matter, unless injustice was done him; and the court may at any time during the trial amend the charge-sheet in that respect.—Rules of Procedure, 33, p. 93.

Variances in  
time or  
place.

Variances in time or place would generally be immaterial, unless the very essence of the offence.<sup>2</sup> These can be amended by a civil court; but a court-martial would refer to the convening officer, who is responsible for the charges, or meet the case by a special finding.

In some cases the time and place would be material—as in a case of burglary, from nine till six o'clock is the legal night, or in a charge against

<sup>1</sup> O'Dowd.

<sup>2</sup> See also chap. iii., Framing Charges, p. 60.

a sentinel for misbehaviour on his post ; but as a rule, it is generally sufficient to prove the substance of the charge.

When the court thinks that the facts proved differ materially from the facts charged, but are nevertheless sufficient to prove the offence, and the difference is not so material as to prejudice the prisoner, they are empowered (Rules of Procedure, 43)<sup>1</sup> to record a special finding.

*Examples of Special Finding.*

A soldier was tried for having deserted on the 19th October 1833, when, in fact, he had deserted on the 19th October 1832, but was still absent on the date mentioned in the charge. The court found the prisoner guilty of the charge, with the exception of so much of it as referred to the date.<sup>2</sup> Special finding, example of.

A prisoner was charged with, "after having been discharged with disgrace from a part of her Majesty's forces, enlisting in the regular forces without declaring the circumstances of his discharge." The particulars alleged that he had been discharged with disgrace from the A brigade of her Majesty's forces, while the evidence brought before the court proved that the prisoner had been discharged from the B brigade, and there was no Example.

<sup>1</sup> P. 100.

<sup>2</sup> Simmons.

mention whatever of A brigade. The substance of the offence was proved—namely, enlistment after discharge with disgrace. The court found the prisoner guilty of the charge, with the exception of the words, the “A brigade of,” and the decision was upheld. The essence of the offence against sec. 32 Army Act was proved, and the variance did not prejudice the prisoner. In charges of making away with or losing kit, variations as to the number of the articles, or as to their value, would be immaterial. In a charge of using threatening or insubordinate language, the following words might be used to meet and cover any variation in the evidence—“in substance and to the effect following”; or the words used set out at length, followed by “or words to that effect.”

Judicial  
notice.

Facts and customs which are so generally known as not to require special proof, do not require evidence to support them, but the court will assume them to be known; this is called *judicial notice*. The court is authorised by Rule of Procedure 73 to take such notice of all matters of notoriety, and matters within their general military knowledge. Example—It would not be necessary to prove that the battle of Waterloo was fought on the 18th of June 1815, that being a matter of notoriety; nor would it be necessary

M. M. L.

to prove general duties, authorities, or obligations of officers, such being matters which officers may reasonably be expected to know.

BY WHICH SIDE PROOF MUST BE GIVEN.

In considering the practice as to the burden of proof, regard must be had to two rules—

Burden of  
proof.  
M. M. L.

1st, Every man is presumed to be innocent until he is proved to be guilty.

2d, He who asserts the affirmative of a fact must prove it.

It follows that the prosecution must, in the first instance, give proof of the execution of the crime, or of facts from which the court may reasonably infer that it has been committed, and that not till then is the prisoner bound to prove his innocence. When, as occasionally happens, the rules are in conflict, the second must give way to the first. Thus, when the charge is a culpable omission or breach of duty, the person who makes the charge is bound to prove it, though it may involve a negative, unless the subject of the negative assertion is peculiarly within the knowledge of the prisoner, in which case he must prove it. For instance, in a charge of leaving the ranks without orders, it would lie on the person charged, to prove that the requisite order

was given. On the other hand, when a prisoner is charged with breaking out of barracks, it would lie on the prosecutor, in the first instance, to prove that it was the prisoner's duty to be in barracks.

Shifting of  
burden of  
proof.

As the trial goes on, the burden of proof may be shifted from the prosecutor to the prisoner by the proof of facts which raise a presumption of his guilt.

Presump-  
tion of in-  
tent from  
unlawful  
act.

When it is proved that an unlawful act has been committed, a criminal intention is presumed, and the proof of justification rests on the prisoner. On a charge of murder the law presumes malice from the act of killing, and throws on the prisoner the burden of disproving the malice by justifying the act. On a charge of wilfully maiming with intent to render unfit for service, the intent will be presumed if it is shown that the act was wilfully done.

#### WHAT STATEMENTS ARE ADMISSIBLE AS EVIDENCE.

In judicial inquiries certain evidence is inadmissible—

I. Nothing is admitted as evidence which does not tend immediately to prove or disprove the charge (Rule of Relevancy).

II. Evidence must be the best obtainable under the circumstances (Rule of Best Evidence).

III. Hearsay is not evidence.

IV. Opinion is not evidence.

The two latter rules are subject to important qualifications.

*Rule of Relevancy.*

\* “What facts are relevant?” No direct answer Rule of relevancy.  
can be given to this question, no precise line drawn. All that can be done is to illustrate the general line which experience has pointed out.

Inquiry into facts other than those charged Res gestæ.  
would generally be irrelevant, but these might have such an intimate bearing on, or connection with the fact charged, that to exclude them would almost make the latter unintelligible. In such a case inquiry would be admissible into these facts, and would be an exception to the rule.

“*Res gestæ*” may be defined as matter so connected with the subject of trial as to explain its object, illustrate its character, and form together with it one transaction, though not directly the point in issue.

Character or general reputation of the accused Character not evidence for prosecution, but for defence. M. M. L. R. P., 39.  
is not admissible as evidence for the prosecution, but is for the defence. The reason for this rule is, that a man should not be convicted because he has a bad name. The prosecutor can there-



- \* fore only give evidence of the prisoner's character to rebut evidence to a contrary effect given by the prisoner. Evidence of good character, when tendered by the prisoner, though of no avail against evidence of facts, may tend to strengthen a presumption of innocence. For instance, a character for honesty might have great weight on a charge of stealing. Character might also influence a superior in mitigating or remitting the sentence.

Evidence of general tendency not admissible.

Evidence of facts tending to show a general disposition to commit the kind of crime charged is not admissible.<sup>1</sup> Example—On a charge of murder, any acts on deceased to show malice are admissible, but acts against another person to show a propensity to commit murder would not be received in evidence. In the case of a soldier charged with sleeping on his post, evidence that he had been found asleep on his post on other occasions would not be admissible. Inquiry into another offence might, under certain circumstances, however, be allowable. For instance, to prove identity of the prisoner in a case of stealing, evidence might be given to show that other

Evidence of another offence admissible—to prove identity, to prove intention.

<sup>1</sup> Exception to this rule: courts-martial have generally, in trials for drunkenness, to receive evidence of previous instances of the same offence, but this is done to show habitual drunkenness, and should not influence the court in their finding.

\* articles which had been on the premises at the time of the robbery were found in possession of the prisoner. So, on a charge of desertion, to prove intention not to return, which is an essential ingredient of the charge, proof might be given that a robbery was committed by the prisoner on the night on which he absented himself. Such collateral evidence would be allowed in this case, to show the intention of accused. Also, to prove malicious language, say in a letter, to a superior, the prosecutor, after proving the particular letter, may prove also that the prisoner spoke or wrote other malicious words on the same matter, in order to show the spirit and intention of the accused. The inquiry here is admissible, not as an inquiry into another irrelevant matter, but as showing the malicious state of mind of the accused, which is part of the charge.

Facts to  
prove inten-  
tion admis-  
sible.

Evidence, also, as to motive, preparation, subsequent conduct, and consequences, are likewise admissible,—such as that the prisoner absconded, that stolen property was in his possession, &c.

There is a peculiarity in the reception of evidence when persons conspire to commit an offence, as in the case of mutiny: the conspiracy once proved, the act of any one of the party is, in the eye of the law, the act of the whole body, but the act must be in furtherance of the common pur-

Acts of con-  
spirators.

- \* pose. A statement made by one conspirator, which is merely a relation of an event forming part of the conspiracy, but is not itself part of the conspiracy, is not admissible as evidence against another conspirator, unless made in his presence.

In trials for conspiracy, whatever the prisoner may have said or done at any meetings held in pursuance of the conspiracy may be given in evidence either for or against him, because a complete view of every part of his conduct will best explain his intention and design.

Clode remarks on this rule, that a collateral inquiry on other facts and circumstances should be received only when they bear on the charge and constitute presumptive proof.

A court would probably act more wisely in receiving than in rejecting doubtful evidence, if tended by the prisoner.

Rule of Procedure 72 forbids a court-martial to receive evidence irrelevant to the charge, or which is inadmissible by rules of civil courts or under any Act of the United Kingdom.

Rule II.  
Best evidence must  
be produced.

Rule II. *The evidence produced must be the best obtainable under the circumstances.*

Secondary evidence is only admissible when the best and most direct cannot be obtained.

- \* The reason for this rule is that there should be no ground for supposing that better evidence is withheld, as in that case the presumption would be that the party withholding had a sinister motive. Only when proof is given that the best evidence cannot be produced, will the law allow the admission of the next best. Reason for this rule.

This rule is chiefly applicable to documentary evidence, and is usually applied in the form of two well-known sub-rules: (1) That parole evidence of written matter can never be received if the document itself is obtainable; (2) That, subject to certain exceptions, a copy of a document is not admissible when the original can be produced. In these cases the document itself is called *primary*, whilst the parole testimony or the copy is called *secondary*. Documentary evidence. Primary and secondary. Primary evidence is given by producing the document itself for the inspection of the court.

Documents which by law are required to be attested must be proved by an attesting witness, unless such course is impracticable, when it is sufficient to prove the handwriting of the person executing the document, and of one witness. Also, if the document purports to be more than thirty years old, and is produced from the proper custody, no evidence is required as to execution and attestation. Attested documents.

\* Documents are divided into two classes,—

Public documents.

Private documents.

Public  
documents.

No definition of public documents is possible; generally they may be said to be acts of public functionaries in the execution of their public duties. Public documents are evidence of their contents on the mere production from the proper custody, and copies of them are also evidence, but the particular kind of secondary evidence required is generally defined by statute.

Private  
documents.

Private documents are all writings not included as public documents, and are, broadly speaking, rejected as evidence;<sup>1</sup> the military official letter is legally a private letter. Secondary evidence may be given of the contents of a private document in the following cases only:—

1. When the original is in possession of the adverse party or a stranger, who refuses to produce it.

2. When it is shown that, proper search having been made, the original is lost or destroyed.

3. When the original cannot easily be removed—example, a tombstone.

<sup>1</sup> Written admissions and confessions of a prisoner, which are private writings, would be an exception to this rule—p. 187.

- \* 4. When the original is a document for the proof of which special provision has been made by statute. Example, sec. 163 Army Act.

5. Entry in a banker's book (42 and 43 Vict. c. 11).

Secondary evidence of a private document is usually given by producing a copy, and calling a witness, who must prove the copy to be correct; or where a copy is not obtainable, by calling a witness who has seen the document, and can give an account of its contents. Secondary evidence, how given.

When certified copies of documents are made evidence by statute, no proof of stamp, seal, or signature, nor of the official capacity of the signing official, is required, but they are admissible as evidence if purporting to be authenticated in the prescribed manner. Certified copies.

The proceedings of a court-martial may be produced to prove that a witness has said so and so, but would be no proof of the truth or falsehood of what he said.

It is not sufficient for the certifying witness to a copy to lay it before the court; he must swear it to be a true copy, and that he compared it himself with the original. Copy of a copy must be traced by each person who compared.

Although private writings are not proofs of the facts stated in them, yet they may be the

- \* best proofs from which inference may be drawn as regards the main issue.

The best proof of handwriting is the evidence of the writer; next, one who saw it done; thirdly, one who knows the writer and has seen him write. Comparison of disputed writing with writing proved to be that of the party in question is permissible, and they may be compared by the court itself. \*

Documents  
made evi-  
dence by  
A. A.

A. A., sec.  
72.

Certain documents are made legal evidence by the Army Act—

1. The record of a court of inquiry on absence of a soldier has the legal effect of a conviction of desertion, if the soldier does not afterwards surrender or is not apprehended.

A. A., sec.  
163.

2. The attestation paper purporting to be signed by the soldier, or the declaration on re-engagement, is evidence of such person having given the answers represented. Enlistment may be proved by a *copy* of the attestation, certified to be a true copy by the officer having the custody of it.

3. A letter or other document about the service or discharge of any person, if purporting to be signed by Secretary of State, or Commissioner of the Admiralty, or any commanding officer of forces, or of a ship, to which such person appears, or alleges to have be-

longed, or to belong, is evidence of the facts stated.

4. Copies purporting to be printed by Government printer, of Queen's Regulations, army circulars, royal warrants, and of rules made by her Majesty or Secretary of State, are evidence.

5. Army List or Gazette, purporting to be published by authority, is evidence of the status and rank of officers.

6. Any warrants or orders made in pursuance of the Army Act by any military authority, and also copies purporting to be certified to be true copies by the authorised officer, are evidence of the matters stated in them.

7. A record in regimental books in pursuance of Queen's Regulations, purporting to be signed by the commanding officer, or by the officer whose duty it is to make such record, is evidence of facts stated.

8. A copy of such record, purporting to be certified as a true copy by the officer having the custody, is also evidence of such record.

9. A descriptive return, purporting to be signed by a justice, is evidence of the matter therein stated.

10. A certificate of civil conviction or acquittal of a person subject to military law (which must be sent to the commanding officer on



application) is sufficient evidence of conviction or acquittal.

A. A., sec.  
166.

11. Original proceedings of court-martials, also certified copies, are admissible in evidence, simply on production from the proper custody without further proof.

A. A., secs.  
109, 112, 115.

12. A route, also a requisition of emergency, if purporting to be signed by the proper authority, is evidence until the contrary is proved.

The expression, "purporting to be signed, printed, &c.," means that if the paper appears to be signed, &c., as mentioned, it can be accepted without proof of signature, &c., unless some evidence is given to the contrary, in which case the court would require positive evidence of the signature, &c., to be given.

\*  
Direct and  
indirect evi-  
dence.

The rule under consideration, that the *best* evidence must be produced, does not apply to any distinction between "direct" and "indirect" evidence.

Circumstan-  
tial evi-  
dence.

It will generally be found that the facts are either (1) directly attested by those who speak from personal knowledge, or (2) they are inferred from other facts satisfactorily proved. The former is generally called *direct* or *positive*, the latter *indirect* or *circumstantial*<sup>1</sup> evidence. The distinction is rather popular than legal, for the facts

<sup>1</sup> Sometimes called *presumptive* evidence.

\* proved are in both cases directly attested, while the acts or intentions which constitute the prisoner's guilt are inferred (also in both cases) from the evidence.

*Direct* evidence is not better than *indirect*, the difference being rather one of kind than of degree. Although in many cases circumstantial evidence is the only kind obtainable, and therefore must be relied on, and is in no way inferior to direct evidence, still it is considered that a court, before convicting on purely circumstantial evidence, should be satisfied, not only that the circumstances are consistent with the prisoner's having committed the act, but that they are inconsistent with any other rational conclusion.

One of the leading rules with respect to circumstantial evidence is stated by a recent writer as follows:<sup>1</sup>—

“The facts on which it is sought to find the inference of guilt must be visibly and evidently connected with the crime.”

The rule which requires the best obtainable evidence does *not* require the strongest possible assurance,—that is to say, an accumulation or repetition of evidence is unnecessary. The evidence of one reliable, credible witness is, in Eng-

Best evidence does not mean strongest possible assurance.

<sup>1</sup> Law Journal, October 1879.

- \* lish law, sufficient, except in treason and perjury.<sup>1</sup> The evidence of a single accomplice is sufficient for a conviction ; but such evidence is considered tainted, and should be received with the greatest caution.

Rule III.  
Hearsay.

Rule III. *Hearsay is not Evidence.*

\*

This rule goes a step further than the last, which forbids secondary evidence when better can be produced ; whereas a certain class of second-hand evidence, called "hearsay," is rejected altogether. Statements of other persons, whether oral or written, repeated by witnesses, are known as "hearsay," and such evidence is excluded absolutely for two reasons—first, that it is not upon oath ; secondly, that the prisoner has no opportunity of examining the author of the statement,—a fundamental principle of English law being that every witness should be examined upon oath in the presence of the accused, who should have an opportunity of cross-examining him.<sup>2</sup>

This rule, however, is not without exceptions. It does not exclude evidence as to statements made in presence of the prisoner. The two chief

<sup>1</sup> See pp. 189 and 33.

<sup>2</sup> Other reasons for rejecting "hearsay": that it supposes some better evidence ; its tendency to protract proceedings ; its intrinsic weakness ; danger of fraud under its cover.

exceptions are—(1) dying declarations; (2) statements forming part of *res gestæ*.

Dying declarations are admissible only when the person making them believes that he is about to die, and when the charge relates to the cause of his death, and only in cases of murder and manslaughter. Dying declarations.

Time between declaration and death makes no difference; but it must be proved that the person had death before his eyes when he made the statement.

Example—A soldier, J. Morgan, was tried at Shorncliffe, in March 1875, for the murder of a comrade. The murdered man's throat and wind-pipe were cut through, so that he could not speak. He had time, however, before death to rush to his tent, and to write on a scrap of paper, "J. Morgan done this." It was objected for the defence, that it was not proved that the man had the fear of death before his eyes when he wrote the words, and the prosecution on that account withdrew that part of their evidence.

It must be shown that there is no hope whatever.

The second exception to the rule of hearsay is *Res gestæ*,<sup>1</sup> that, when a statement is part of the *res gestæ*,<sup>1</sup> or transaction constituting the offence, then,

<sup>1</sup> For definition, see p. 171.

whether it is or is not made in the presence of the prisoner, it is admissible as evidence. What was said may be not only part of the transaction, but the very point in issue. What was said by a person robbed at the moment, or a woman ravished, would be accepted as strong corroborative evidence; but no particulars would be received, evidence only as to the main fact of complaint having been made. When it is intended to prove the bodily or mental feelings of a person at a particular time, evidence may be given of the usual expression of such feelings made by him at that time.

Further  
exceptions.

Declaration of a deceased person against his interest, also statements made in course of business by persons since deceased, statements made by a deceased witness before a court-martial, are admissible in evidence.

Depositions.

In civil trials, when a witness is too ill to attend a trial, a deposition may be read in court as evidence, on proof that the witness is dead or too ill to appear; that the deposition was taken in presence of the accused; that the latter had an opportunity of examining the deponent; and that it was taken before and signed by a justice. This would only be applicable to a court-martial on a trial for a civil offence.<sup>1</sup>

<sup>1</sup> A court-martial has power, however, to adjourn to the abode of the sick person.

A *deposition* must not be confounded with a dying *declaration*.

The summary of evidence taken before a commanding officer cannot be admitted as evidence of the facts recorded by it; but when a discrepancy is alleged between the summary and the evidence (parole) given before a court-martial,<sup>1</sup> or when the falsehood of a statement in a summary becomes the subject of trial, the summary may be given in evidence as confirmatory of the statement having been made.

Summary of evidence before commanding officer, how far admissible.

It has been mentioned that hearsay applies to documents as well as to parole statements; but, in the former case, many are excepted, being made evidence by statute. Examples—recitals of public facts, proclamations, entries in public record made in performance of duty.

#### Rule IV. *Opinion is not Evidence.*

Rule IV  
Opinion.

The reason for this rule is, that a witness must depose only to *facts* which have come under his own observation, and it is the duty of the court to form *opinion* on these facts. For instance, a witness on a trial for desertion may not state in his evidence that "the prisoner deserted,"

<sup>1</sup> It is the duty of the president of a court-martial to question a witness as to any variance between his evidence as it appears in the summary and that given before the court.

&c. Desertion, involving the intention of remaining absent, is the very point being tried, and which the court must decide. The witness may know, as a matter of fact, that the prisoner was absent, and his evidence should be confined to that, or to such other facts connected with the charge as may be within his actual knowledge.

**Exception.** The chief exception to this rule relates to the evidence of experts. The opinion of an expert is admissible on any point within the range of his special knowledge.

**Experts.** *Experts* are persons specially cognisant of certain trades or business. They are required to speak to the best of their knowledge, not as matter of certainty. Medical men are the usual experts; but they may be of any kind—engineers, experts to prove handwriting, &c. &c. When there is a question of any particular science or art, the opinion of an expert is taken, who gives his opinion in the abstract,—the court apply it with regard to the case of the prisoner.

Although  
opinion ex-  
cluded, be-  
lief is not.

This rule, which requires a witness to state what he *knows*, and not what he *thinks*, does not force him to depose to facts with absolute certainty. In practice, a witness is constantly allowed to state a matter to the best of his belief, though he will not positively swear to it; and it has been held that a witness who swears falsely

that he *thinks* or *believes*, is liable to be convicted of perjury.

Opinion as to conduct of prisoner may sometimes be admissible in evidence when a witness has derived that opinion from a combination of circumstances difficult to fully lay before the court, and where the conduct of the accused is the question.

Opinion as to conduct sometimes admissible.

### *Admissions and Confessions.*

- \* Admissions, as distinguished from confessions, are, broadly speaking, not receivable in evidence. It is the practice of courts-martial, however, to accept admissions made in open court as to collateral or comparatively unimportant events, not involving criminal intent, which are not in dispute, but must be proved either by the prosecution or the defence. Thus, it is customary to allow either party to admit the authenticity of documents, where such writings are receivable when proved. Also in cases when admission will expedite proceedings, and do not go to the merits of the matter before the court—for example, that an account is correct, that an order was given,<sup>5</sup> that a letter was sent or received.

Admissions as evidence.

### *Confessions as Evidence.*

As a general rule voluntary confessions made

Confessions.



\* by the prisoner are evidence against him, and against no other; but it is essential that no threat, promise, or hope of pardon as an inducement has been held out to him by a person in authority. A confession, however, might be used against an accomplice, to this extent, that if made in his presence and if implicating him, the fact of his remaining silent, or his promptly denying, might be used in evidence against or for him. A confession is, however, held to be voluntary unless the contrary is proved. The following are considered persons in authority:—Constable in charge of prisoner, prosecutor, any person having judicial authority, master or mistress when the offence concerns them, commander of a guard, or sentry over a prisoner. These can, however, receive a purely voluntary confession; but they must warn the prisoner that what he says will be used in evidence against him. An inducement held out by another in presence of a person in authority is the same as if made by the person in authority; but if one prisoner induces another to confess in presence of a person in authority, such confession is admissible.

A confession obtained by artifice or deception is not invalid, though obtained by a person in authority. Examples—turnkey, instead of posting a letter, gives it to the authorities; the letter

\* is good evidence: a prisoner is led to believe that all his accomplices are in gaol; he confesses; his confession is good.

Facts discovered in consequence of a confession improperly obtained may be proved. A confession made under promise of secrecy may also be received. Evidence amounting to a confession, even if given on oath at previous proceedings, may be used against the person giving it, though he might have refused to answer the question put to him. If witness did answer a question which he was not bound to do, he is liable for his answer; but if, after refusing, he is improperly compelled to answer, his answer is not a voluntary confession, and cannot be used against him.

The proceedings of a court of inquiry, however, cannot be used as evidence against a prisoner before a court-martial (Rules of Procedure, 123), although it seems that statements made before his commanding officer could.<sup>1</sup> \*

#### WITNESSES.

The law allows the evidence of one credible witness to be sufficient, except in the cases of *perjury* and *treason*. In a trial for perjury two witnesses are usually required, because otherwise

<sup>1</sup> Manual of Military Law.

there would only be one oath against another. It would be sufficient, however, on a charge of perjury, if one witness proved the charge of perjury directly, while the second gave strong circumstantial evidence. Also, if the prisoner has sworn both ways, one direct witness against him would be enough.

*Competency of Witnesses.*

Compe-  
tency.

Formerly many persons were excluded as incompetent from giving evidence; the tendency of late years has been to abolish all restrictions as to the admissibility of witnesses, and to bring the rule to what Blackstone stated it to be,—“all witnesses that have the use of their reason to be received and examined.”

The forms of incompetency at present existing are—

1. Incompetency of the accused and the wife or husband.
2. Incompetency from want of understanding.
3. Incompetency on account of the relationship of legal adviser.
4. Incompetency of a member of the court-martial to be a witness for the prosecution.

Incompetency from want of religious belief may be regarded as a thing of the past.

1. The incompetency of the accused arises from

the principle of English law, that no one is bound to criminate himself. The prisoner might be compelled to do so in cross-examination. In some legal systems (United States, France) the prisoner is allowed to give evidence. This plan is thought by many to be more likely than our law as it stands at present to elicit the truth.<sup>1</sup> Prisoners jointly tried are incompetent witnesses for or against each other. A prisoner, therefore, who desires to avail himself of the evidence of a person included in the same charge, should apply for a separate trial.

Incompetency of accused.

Persons jointly tried.

When persons are jointly tried, one of them may be acquitted, and become evidence against the rest. This is called turning king's evidence. With courts-martial the usual course would be for the convening officer to dispense with the trial of one, who would then become a witness.

Husband and wife are not admitted as witnesses for or against each other, except in cases of personal injury of one by the other. Nor can they be witnesses for a person tried jointly with one of them, when the evidence would be likely to tend to the acquittal of that one.

Husband and wife.

An exception to this rule is made by the Army Act, sec. 156 (3), which provides that a person

<sup>1</sup> This is likely to be altered in the near future. Discussion is now going on in the press in connection with the late trial of O'Donnell, and the action of the judges afterwards.

charged with the offence of purchasing from soldiers regimental necessities, equipment, stores, &c., and the wife or husband of such person, may, if she or he think fit, be sworn and examined as an ordinary witness. Also, by Married Women's Property Act, 1882, when a wife brings criminal proceedings against her husband (which she can do if living apart for the protection of her property), husband and wife are competent to give evidence against each other.

No other relationship entitles to exemption.

Incompetency from want of understanding.

2. An idiot or lunatic (unless in lucid interval) is incompetent. Persons deaf and dumb, or dumb only, may give evidence through an interpreter. An infant (under seven) is competent to give evidence at any age if it satisfies the test—that it has sufficient intelligence to understand the nature and obligation of an oath. The judge or court might question the child to find out the state of its mind.

Legal adviser.

3. Counsels, solicitors, and their agents are not allowed, without consent of their clients, to give evidence of communication made to them by their clients in a *professional capacity*.

This does not apply to any others—such as priest, medical man, conveyancer,

A member of a court-martial is a competent witness in favour of the prisoner, but cannot give evidence for the prosecution.

*Oath.*

The law now allows any form of oath to be taken which would be binding upon the taker's conscience.

Thus, a Chinaman may be sworn by means of a cracked saucer.

When persons object to take an oath, or are objected to for want of religious belief, they are to take the declaration in the prescribed form, and afterwards giving false evidence amounts to perjury.

*Credibility.*

The great canon as to the credit of witnesses is, that it is the business of the jury—i.e., the court—to form their opinion thereon as on any other matter of fact. Credibility.

The degree of credit would be proportionate to the witness's knowledge of the facts, his disinterestedness, his integrity, his veracity, and his being upon oath.

*Examination of Witnesses.*<sup>1</sup>

The witness is first examined by the party who produces him, called "examination-in-chief." He is then "cross-examined" by the adverse party, after which he may be re-examined by the party Examination.

<sup>1</sup> See also chap. iv., p. 120.

who produces him, on any fresh matter which may have been brought out in the cross-examination. Finally, the court may put such questions as in their opinion may tend to elicit the truth. This they can do at any time, but it is preferable to do so after the other parties have done.

The rules as to examination-in-chief and cross-examination are generally the same, whether the witness be for the prosecution or for the defence. They are based on the supposition that the witness called by the party examining him is favourable to his side, and therefore unfavourable to his opponent.

If this should turn out not to be the case, the rules of cross-examination apply to one who thus proves himself hostile to the party producing him.

What questions may be put to witness ?

Examination-in-chief.

Questions must be relevant.

1st. Only those *relevant* to the matter at issue ; but if circumstantial evidence is resorted to, of course greater latitude will be allowed, as it is not so easy to estimate the relevancy of the question.

Leading questions (generally) not allowed.

2d. *Leading questions* may not be asked in examination-in-chief. A leading question is one which suggests to the witness the answer which the questioner requires. Thus, to ask the witness, "Had the prisoner a white hat on?" would be a leading question ; but the question, "What sort of a hat had the prisoner

on?" would not be so. It is often given as a test whether a question be leading or not, whether it might be answered by "Yes" or "No." This test is, however, by no means decisive. There are certain exceptions to this rule, that leading questions may not be put in examination-in-chief.

(a) To identify persons or things which have already been described, the attention of witness may be directly pointed to them. Exceptions.

(b) When a witness is called to contradict another who has sworn to a certain fact, he may be asked in direct terms whether such fact ever took place.

(c) When witness is, in opinion of the court, hostile to the party calling him.

(d) When witness is unable to answer general questions from defective memory, or the complicated nature of the matter as to which he is interrogated.

Leading questions are also allowed—

(a) When merely introductory, so as to save time.

(b) When the particular matter is not disputed.

We have seen that the evidence of a witness must relate to what is immediately *within his knowledge* and recollection. A witness is not allowed to read his evidence, or refer to notes Refreshing  
memory.



of evidence already given by him; but he may refresh his memory by referring to writings made by himself while the transaction was fresh in his mind, or to notes made by another person, and read by the witness within the time aforesaid, if he knew them to be correct when he read them. Any writing so referred to must be produced and shown to the adverse party if he so requires, and he may cross-examine the witness on it.

Cross-examination.

Leading and irrelevant questions are allowed in cross-examination, but the questioner must not put into the witness's mouth the very words he is to echo back again. Questions in cross-examination are of two classes—those which tend to refute or explain what has been given in evidence at the examination-in-chief; those whose object is to affect the credit of the witness.

Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character, except in the two following cases: (1) where the witness is asked whether he has ever been convicted of felony or misdemeanour, and denies or refuses to answer; (2) when he is asked a question tending to show that he is not impartial.

Re-examination.

Re-examination must be confined to questions tending to inquire into or explain what has transpired on cross-examination.

The re-examiner is strictly confined to such matter; and he may not ask questions which he might, and ought, to have put on examination-in-chief.

And if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.

Objections to questions should be made before the witness has time to answer. Objections to questions.

Witnesses may be confronted one with another in court, to clear up discrepancies, identify, &c.: the proper time for doing this is after the cross-examination.<sup>1</sup> Confronting witnesses.

### *Privilege of Witnesses.*

Persons *competent* to give evidence are not always *compellable* to do so. Persons competent not always compelled to give evidence.

No one is bound to answer a question if the answer would tend to incriminate himself or his wife. Accordingly, an accomplice cannot be examined without his consent; but if he has come forward to give evidence on a promise of pardon, and he refuses to give full information, he is liable to be convicted on his own confession. This privilege does not extend to answers which would only show civil liability—for instance, that the answerer owes a debt. Witness not compelled to criminate himself.

<sup>1</sup> Simmons.

Affairs of  
State privi-  
leged.

Another class of privileges is based on considerations of public policy. No one can be compelled to give evidence relating to any affairs of State, or to official communications between public officers, without the consent of officer at the head of the department concerned. On this principle confidential reports and letters cannot be produced in evidence, except by consent of superior authority. If such consent is refused, proof of the refusal should be laid before the court.

Confidential  
documents  
privileged.

Court of  
inquiry.

So also minutes of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents, without the consent of the authority who ordered the assembly of the court of inquiry.

Communi-  
cations be-  
tween  
married  
persons.

Communications during marriage between husband and wife are privileged.

Doctors and  
clergymen  
not privi-  
leged.

Doctors and clergymen are not privileged from the disclosure of communications made in professional confidence.

Privilege  
may be  
waived.

A witness may waive his privilege; and if he then chooses to answer, his statement must be received in evidence.

Question  
to be entered  
on proceed-  
ings.  
R. F., 98.

Questions should be entered on the proceedings, whether answered or not, if the prosecutor, the prisoner, or the court, think fit. When a witness claims privilege, the court have to decide whether the question can be put or not: the

court may also interpose, and inform a witness that he is not bound to answer any question. This should also appear in the proceedings.

The mode in which evidence is to be given before courts-martial is also dealt with by Rules of Procedure, 72-84. (*General Provisions as to Witnesses and Evidence.* See chap. iv. p. 117.)

*Summary of chief points as regards Evidence.*

The following points should be specially attended to by courts-martial when evidence is being tendered, as it is the duty of the court to see that the rules of evidence are strictly adhered to:—

That it is *relevant*.

That it is *best*.

That it is *not hearsay*.

That it is not mere *opinion* (exception, experts).

That, if a confession or admission, it is legally admissible.

That, if a document, it is properly put in.

That witness is *competent* to give evidence.

That a writing used to refresh memory is legally admissible.

That examination of witnesses is fairly and properly conducted.

## CHAPTER VII.

PAY—FORFEITURES—COURTS OTHER THAN  
COURTS-MARTIAL—ENLISTMENT.*Provisions by Statute (Army Act) regarding Pay.*Pay.  
A. A., sec.  
136.

AUTHORISED deductions *only* can be made from military pay.

Officers.  
A. A., sec.  
137.

Penal deductions may be made from officers' pay as follows:—

*Officer—*

1. For absence without leave.
2. Compensation for any expenses occasioned by commission of offence, as may be awarded by the court-martial by which he is convicted.
3. To make good any pay of officer or soldier which he has unlawfully retained.

*Soldier—*Soldier.  
A. A., sec.  
138.

1. Absence without leave, desertion, while prisoner of war.

2. Every day of imprisonment, or under detention on a charge on which he is afterwards convicted.

3. Every day of sickness in hospital caused by an offence against the Army Act committed by him.

4. Compensation for any expense, loss, damage occasioned by *commission of an offence*, as may be awarded by court-martial or by commanding officer of one of her Majesty's ships, or as ordered by competent authority under Army Act, sec. 73.<sup>1</sup>

5. Also to make good compensation for expenses, loss, damage to arms, ammunition, equipment, clothing, necessaries, &c., &c., or to any building or property, as may be *awarded by commanding officer*, or court-martial, or commanding officer of one of her Majesty's ships.

6. Compensation, in the case of a soldier who belonged to the auxiliary forces when he enlisted, to make good any stoppages of pay he was under in those forces, and any sum he was liable to pay by reason of quitting the auxiliary forces.

7. Liquor money on board ship, not exceeding one penny a-day for twenty-eight days.

8. Fine awarded by court-martial, commanding officer, or civil court.

9. To pay sum ordered by Secretary of State for maintenance of wife and child.

<sup>1</sup> See p. 157.

But after all authorised deductions, the soldier must have left him one penny a-day: also a soldier cannot be subjected to deductions greater than what *is sufficient to make good* the expenses, loss, &c.

It must therefore be borne in mind that in the case of a soldier being sentenced to make good necessaries (for example), and some of these are eventually found, he cannot be charged with payment for others in place of these recovered.

A. A., sec.  
139.

Any deduction of pay may be remitted by royal warrant or by Secretary of State.

A. A., sec.  
140.

For purposes of deduction of pay no time shall be called a day unless the absence or imprisonment has lasted six hours, or unless the absence caused any military duty to be thrown on some other person. For details, see royal warrant, pars. 766, 766 (a), 766 (b).

A. A., sec.  
141.

Assignment of military pay or pension is prohibited; and all such assignment, unless as authorised by royal warrant, is void.

### *Provisions as to Stoppages of Pay by Royal Warrant.<sup>1</sup>*

*(Goes more into detail than the Act.)*

Pay.

A soldier forfeits pay:—

R. W., par.  
766.

(a) For every day of absence over five;

<sup>1</sup> Royal Warrant, Pay and Promotion, 1882.

under five at discretion of commanding officer; but if convicted by court-martial, he forfeits pay for every day of absence.

(b) For every day of imprisonment by court-martial, commanding officer, or civil court, or days of detention awaiting trial for offence of which he is afterwards convicted, or under detention having confessed desertion, and the forfeiture is ordered by competent military authority.

(c) For every day in hospital for sickness caused by an offence against the Army Act committed by him.

(d) For any period when "prisoner of war," unless after inquiry pay is restored by Secretary of State. R. W., par. 770.

A soldier receives no pay on day of release from prison, nor will a non-commissioned officer reduced to the ranks, if previously confined, receive pay on day of reduction. R. W., par. 767.

A soldier acquitted or illegally convicted, or released without trial (except in case of confessed desertion and trial dispensed with), is to receive full pay from date of confinement. But he is liable to subsistence, or to hospital stoppages during confinement. R. W., par. 768.

A soldier sent home as prisoner for discharge is to receive no pay. R. W., par. 769.

When a commanding officer orders stoppages R. W., par. 771.



of a man's liquor on board ship, the soldier forfeits 1d. a-day for days of stoppage, whether he has been previously drawing liquor ration or not.

#### FORFEITURES.

##### *Forfeitures by Court-Martial.*

R. W., pars.  
583, 650,  
912, 929.

A general or district court-martial may in addition to, or without other punishment, sentence any offender to forfeit all or part of his past service towards pension or deferred pay—his medals, decorations, annuities, gratuities, good-conduct badges or service towards good-conduct badges; but a court cannot do so if the offence is one which of itself entails forfeiture.

##### *Forfeiture of Pensions and Deferred Pay.<sup>1</sup>*

Pension and  
deferred  
pay.  
R. W., par.  
580.

The following offences entail forfeiture of former service towards pension and deferred pay.

Desertion, fraudulent enlistment, discharge with disgrace,<sup>2</sup> or discharge on conviction by civil power, or for giving false answer on attestation.

<sup>1</sup> Deferred pay at the rate of £3 a-year, or 5s. for thirty days, is payable to a soldier on discharge, or transfer to reserve. When volunteers are called to join the colours from the reserve, they are entitled to deferred pay from date they joined the reserve. Royal Warrant, 642, 647 (a).

<sup>2</sup> Discharge with disgrace is here used with the same inclusive meaning as laid down in sec. 32, Army Act, see p. 28,—viz., ignominy—as worthless and incorrigible—on conviction of felony, or on sentence of penal servitude.

A soldier forfeits service towards pension and deferred pay for every day on which he forfeits ordinary pay, except for absence of five days or less, imprisonment not exceeding seven days, and periods of imprisonment under detention for absence when such absence is less than six days, and the imprisonment awarded by commanding officer is less than eight days. R. W., pars.  
579, 649.

A soldier who has improperly enlisted while belonging to the army reserve, and who is re-transferred to the army reserve, can only reckon service, under such improper enlistment, as reserve service. If he is retained in the regular army, he will forfeit all service towards pension and deferred pay before the date of his improper enlistment. R. W., par.  
581.

If service towards pension is restored, deferred pay and good-conduct badges are restored also; but if a soldier dies on active service, or within six months after, from the effects of active service, no deduction can be made from his deferred pay. R. W., par.  
582.

### *Forfeitures of Medals, &c.*

A soldier forfeits all medals and decorations, with any annuity or gratuity appertaining, if convicted of the following offences:— R. W., par.  
910.  
Medals.

Desertion, fraudulent enlistment, stealing or embezzlement, disgraceful conduct, or if sen-

tenced to penal servitude or to discharge with ignominy.

R. W., par. 911. Also those granted to him after July 1, 1881, if—

Liable to be tried on confession of desertion, or fraudulent enlistment;

Or if discharged with disgrace,<sup>1</sup> or on conviction by civil power, or on giving false answer on attestation;

Or if sentenced by civil court to imprisonment over six months.

R. W., par. 913. Any medals, decorations, annuities, gratuities forfeited may be restored by Secretary of State on recommendation of commander-in-chief.

### *Forfeiture of Badges.*

R. W., par. 927. Badges. One badge is forfeited for each regimental entry in defaulter book, unless the entry is such as to involve further loss.

R. W., par. 928. Forfeiture of badges includes loss of portion of a half-term<sup>2</sup> of good conduct which soldier may have given towards restoration of a badge previously forfeited.

R. W., pars. 930, 981, 982. A soldier forfeits all good-conduct badges if he has illegally enlisted while belonging to the reserve; and if he is retransferred to the reserve,

<sup>1</sup> See footnote, p. 204.

<sup>2</sup> A half-term = one year. Royal Warrant, par. 922.

does not begin to count his time towards good conduct until he again rejoins the colours.

Also, if sentenced to imprisonment over six months by civil court—if convicted of desertion or fraudulent enlistment—if discharged with disgrace,<sup>1</sup> or on conviction by civil power, or on giving false answer on attestation.

#### ARTICLES OF WAR AND RULES OF PROCEDURE.

It is made lawful, as formerly, for her Majesty to make articles of war, which all judges and courts are bound to take judicial notice of. This power is not now limited to the United Kingdom, but no person can be punished to the extent of life or limb, or penal servitude, except as prescribed in the Army Act; further, crimes made punishable by the Act must be punished according to the Act. (Since the articles of war are now incorporated in the Army Act, probably the exercise of this power will be very rare; there are no articles of war at present.)

Power of the Crown to make articles of war. A. A., sec. 69.

Her Majesty is empowered to make rules of procedure, under the hand of a Secretary of State, in respect of all matters which are directed to be prescribed (example, courts-martial and courts of inquiry), but these must be consistent with the

To make rules of procedure. A. A., sec. 70.

<sup>1</sup> See footnote, p. 204.

Army Act, and must be laid before Parliament. They are also to be judicially taken notice of.

#### COURTS OF INQUIRY.

##### *Courts of Inquiry on Illegal Absence.*

Court of  
inquiry on  
illegal ab-  
sence.  
A. A., sec.  
72.

The court of inquiry on a deserter is the same as formerly. It is assembled when a soldier has been absent twenty-one days. The evidence is given on oath. Commanding officer must enter in regimental books a record of the declaration of absence and deficiency of kit (if any), and such record is legal evidence of desertion, if the absentee does not surrender, or is not apprehended.<sup>1</sup>

R. P., 124. A court of inquiry under section 72 of the Army Act will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and deficiency.

They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf

<sup>1</sup> The declaration has the legal effect of a conviction of desertion if the prisoner is not tried ; if he is tried, it would be admissible in evidence, like all entries in regimental books—p. 179.

of the absentee, and in making their declaration will give due weight to the evidence of such witnesses.

A court of inquiry will administer the same oath or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn.

*Other Courts of Inquiry.*

- \* A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

Courts of  
inquiry.  
R. P., 123.

The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

The court will be guided by the written instructions of the officer who assembled it. The instructions should be full and specific, and must state the general character of the information required from the court in their report.

A court of inquiry has no judicial power, and is in strictness not a court at all, but an assembly of persons directed by a commanding officer to collect evidence with respect to a transaction into which he cannot conveniently himself make inquiry.

Previous notice should be given of the time

- \* and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

Whenever any inquiry affects the character of an officer or soldier, full opportunity must be afforded to such officer or soldier of being present throughout the inquiry, and of making any statement he may wish to make, and of cross-examining any witness whose evidence, in his opinion, affects his character, and producing any witnesses in defence of his character.

A court of inquiry has no power to compel witnesses to attend, and the evidence cannot be taken on oath.

A court of inquiry will give no opinion on the conduct of any officer or soldier, and the proceedings of a court of inquiry cannot be given in evidence against an officer or soldier. Nevertheless, in the event of an officer or soldier being tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, such officer or soldier shall be entitled to a copy of the proceedings.

The whole of the proceedings of a court of inquiry will be forwarded by the president to the commanding officer who assembled the court, who will, on his own responsibility, form such opinion as he thinks just.

- \* When, in consequence of the assembling of a court of inquiry, an opinion adverse to the character of any officer or soldier is formed by the officer who determines the case so inquired into, such adverse opinion shall be communicated to the officer or soldier against whom it has been given.

The court may be reassembled as often as the convening officer may direct, for the purpose of examining additional witnesses or recording further information.

Members of a court of inquiry in a case which is subsequently the subject of a court-martial, are not to be detailed as members of the court-martial.

A court of inquiry may be assembled by any officer in command, to assist him in arriving at a correct conclusion on any subject; and it may be required to give an opinion on any point not involving the character of any officer or soldier.

Q. R., sec.  
vi. para.  
118-125.

In every case of a soldier becoming maimed or injured, except by wounds in action, a court of inquiry is to be assembled to investigate the circumstances, but not in this case to give an opinion. Also, on every returned prisoner of war.

### *Boards.*

Committees and boards differ only from courts of inquiry in so far that the objects for which

Boards.



- \* they are assembled should not involve any point of discipline. They will follow as far as may be convenient the rules for courts of inquiry, but are not bound by them. All proceedings of courts of inquiry, committees, and boards, for which special forms are not provided, are to be written on Army Form A 2.

Q. B., sec.  
xix par. 193.

The discharge board of former days is dispensed with; the commanding officer is now by regulation directed to inquire into and complete the necessary documents. \*

#### ENLISTMENT.

Enlistment.

The Army Act embodies all former laws relating to enlistment. The present system is elastic: the Act lays down a framework, but empowers the Secretary of State, by means of the reserve, to open or fill the ranks.

#### *. Conditions as they now stand by the Army Act.*

A. A., sec.  
76.

The term of original enlistment is limited to twelve years; it may be less, but it cannot be more.

Terms.  
A. A., sec.  
77.

Original enlistment may be either for—

1. Whole term in army service.
2. Such portion as may be fixed from time to time by Secretary of State, and *specified in the*

*attestation paper*, in army service, and the rest in reserve.

The Secretary of State may, by regulations, vary the conditions, with the soldier's consent, either to—

1. Enter reserve at once for the rest of his engagement.

2. Extend his army service for whole, or part, of the rest of his engagement.

3. Extend his term of original enlistment up to twelve years.

Also, Secretary of State may, by regulations, with consent of soldier, permit reserve men to re-enter army service for all or part of their original enlistment.

Before 1879 there had to be excluded, in reckoning service for discharge, a great many different periods, such as during desertion, absence without leave, imprisonment, imprisonment awaiting trial, prisoner of war, &c.<sup>1</sup>

Under the new law, however, the soldier will not forfeit service towards discharge, or towards transfer to the reserve, for any absence or any imprisonment; but if convicted of desertion or

<sup>1</sup> A man who enlisted under the Acts of 1867 or 1870, and who has not become subject to Part II. of the Acts of 1879 or 1881, is still liable to these deductions. Queen's Regulations, sec. xix. par. 75.

Change of conditions.  
A. A., sec. 78.

A. A., sec. 79.

fraudulent enlistment, or having confessed the same, and trial is dispensed with, he will forfeit all previous service, and will begin his engagement again as if he were enlisted at the date of his conviction.

Forfeiture of service towards discharge must not be confounded with other forfeitures which have been dealt with above. A soldier's time towards his discharge commences to count from the date on which he signs his attestation, and continues to count, notwithstanding any imprisonment, &c., until date of discharge,—the only case in which he loses past service towards discharge being, as mentioned, on conviction or confession of desertion or fraudulent enlistment.

Forfeiture of service towards pay, deferred pay, pension, medals, good-conduct pay, is entailed in consequence of certain convictions, and has been separately treated, and can also be awarded by sentence of court-martial.

#### *Proceedings on Enlistment.*

Mode of  
enlistment  
and attesta-  
tion.  
A. A., sec.  
80.

Recruiter must give a notice to the person wishing to enlist.

This notice, prescribed by Secretary of State, gives the general conditions of the contract (service, transfer, &c.), and directs the person to ap-

pear before a justice at a certain time and place.

The justice asks the recruit whether he assents, and will not proceed if the recruit is under the influence of drink. If the recruit fails to appear, or to assent, no further proceedings are taken.

If he assents, the justice puts the questions on the attestation paper, and administers the oath of allegiance. After signing, and taking the oath, the man is an enlisted soldier. The officer who finally approves must (on application) furnish the recruit with a certified copy of his attestation.

The date recruit signs is the date of his attestation paper.

The commanding officer of the soldier, or any superior authority, can, if satisfied that there is an error, bring the recruit before some justice, who can amend the error in the attestation paper, or discharge the man. This also applies to duplicate attestations, and any amendment must be made in both of the duplicates (Army Annual Act, 1883).

By paying a sum of £10 a recruit can, within three months of his attestation, *claim* his discharge, unless the reserves are called out, in which case he remains a soldier during that period.

Discharge  
by purchase.  
A. A., sec.  
81.

*Appointment and Transfer.*

Enlistment  
for general  
service.  
A. A., secs.  
82, 101.  
R. P., 127.

Recruits may, by regulation of Secretary of State, be enlisted for particular corps, but unless so provided they are enlisted for general service. The competent authority—who is for this case the commanding officer of the soldier, and every officer superior to him—must appoint the recruit to a corps as soon as practicable.

Appoint-  
ment to  
corps, and  
transfer.  
A. A., secs.  
83, 89.

A soldier once appointed to a corps is to serve in it for the period of his army service. He cannot be transferred, except under the following conditions:—

1. If enlisted for general service, he may be transferred, within three months of his attestation, to any corps of the same branch.

2. At any time, to any corps, with his own consent.

3. To a corps of the same branch in the United Kingdom or to the reserves, when he has been invalided from service abroad, or when, his corps having been ordered abroad, he is either unfit to go, or is within two years of the end of his army service or re-engagement.

4. If serving abroad, and, at the time his corps is ordered home or to another station, he has more than two years' army service unexpired, he

may be transferred to any corps of same branch on foreign service.

This does not apply to men who have engaged for their whole time in army service, or to re-engaged men.

5. When a soldier has been transferred to serve in any corps, not being a corps of infantry, cavalry, artillery, or engineers, he may be transferred to any corps at home, or abroad if the corps with which he is serving is abroad, or to the corps in which he was previously serving, either in the rank he holds or in any lower rank.

6. Soldiers who have been convicted of desertion or fraudulent enlistment, or have confessed the same, or who have been sentenced by court-martial to imprisonment for not less than six months, may be transferred to any corps, in commutation, wholly or partly, of other punishment.

7. A soldier committed, or delivered into military custody, by a court of summary jurisdiction, as a deserter, may be transferred to any corps, and this without prejudice to his subsequent trial and punishment.

The competent military authority to carry out these transfers is—

The commander-in-chief, or the adjutant-general, at home.

The commander-in-chief, in India.

The commander-in-chief, in any presidency.

The general officer commanding, in a colony or elsewhere.

Except in sub-sec. 2, when general officer commanding in Ireland, and generals commanding districts in the United Kingdom, are to be added.

*Re-engagement.*

Re-engage-  
ment.  
A. A., sec.  
84.

Subject to regulations of a Secretary of State, a soldier may, if in army service, and within three years of the completion of his original term of enlistment, re-engage to complete twenty-one years.<sup>1</sup>

(The declaration on re-engagement is now made before the commanding officer.)

Continuance  
after  
twenty-one  
years.  
A. A., sec.  
85.

A soldier may be allowed to remain in the service after twenty-one years' service on approval of his commanding officer; but he can claim his discharge at any time on giving three months' notice.

Prolonga-  
tion in cer-  
tain cases.  
A. A., sec.  
87.

If a man's service expires during war, or when on service abroad, or when the reserves are called out, he may be detained for one year; also, if a man's time for transfer to the reserve arrives during war, he may be detained one year. In either case, however, the soldier must be dis-

<sup>1</sup> See regulations now in force, p. 222.

charged as soon as his services can be dispensed with. Also, if war exists, a soldier may agree to continue in the service till the end of the war, or until he gives three months' notice of leaving. A man so arranging must make a declaration before his commanding officer.

A Secretary of State is empowered to give (by regulation) non-commissioned officers who extend their army service the right to re-engage.<sup>1</sup>

Non-commissioned officers' right to re-engage.  
A. A., sec. 86.

In cases of imminent national danger or great emergency, her Majesty may continue soldiers in, or require reserve men to re-enter, army service.

Calling out reserves.  
A. A., sec. 88.

A soldier serving abroad, when entitled to be discharged, or to be transferred to the reserve, must be sent home at once, and he receives the cost of journey to place of attestation.

Discharge or transfer to reserve.  
A. A., secs. 90, 91.

A lunatic soldier on discharge may be sent by Secretary of State to a workhouse or lunatic asylum.

### *Discharge.*

A soldier can only be discharged by sentence of court-martial, by order of competent military authority, or by authority direct from her Majesty.

Discharge.  
A. A., secs. 92-97.

<sup>1</sup> See regulations now in force, p. 222.

<sup>2</sup> The commander-in-chief or adjutant-general, at home; the commander-in-chief or commander-in-chief of a presidency, in India; the general commanding elsewhere,—Army Act, 101, and Rules of Procedure, 127.



Every discharged soldier receives a certificate of discharge, stating service, conduct, character, and cause of discharge. Procedure on discharge is now left to regulation. As we have seen, it is carried out by the commanding officer of the soldier.<sup>1</sup>

*Authorities to Enlist and Attest, and Provisions  
as to Persons to be Enlisted.*

Authorities  
to enlist and  
to attest  
recruits.

Secretary of State is empowered to make regulations authorising persons to enlist, which are to have the same authority as the Army Act.<sup>2</sup>

The following persons are deemed to be justices of the peace for the purpose of attestation,—that is to say, have power to attest: Officers authorised under regulations of Secretary of State;<sup>3</sup> in India, a magistrate, or any one authorised by the Governor-General; in native

<sup>1</sup> P. 212.

<sup>2</sup> See Queen's Regulations, sec. xix. part i.

<sup>3</sup> A new provision, Army Annual Act, 1883. The following officers have power to attest:—

Officers commanding corps.

"	"	regimental districts.
"	"	battalions of infantry.
"	"	batteries of artillery.
"	"	regiments of cavalry.

Assistant adjutant-generals for recruiting in London and Dublin.

Queen's Regulations, sec. xix. para. 10, 11, 32.

states, a British resident; in a colony, a magistrate, or any one authorised by the governor.

Beyond United Kingdom, India, and colony, any British consul.

Subject to rules by Secretary of State, aliens may be enlisted to the extent of one to every fifty British subjects in any corps, but they cannot hold higher rank than that of warrant officer; negroes and persons of colour may be enlisted without restriction as to number, and while serving have all the rights of British subjects.

Special provisions as to persons to be enlisted.

A master can claim an apprentice who is under the age of twenty-one and has enlisted, under the following conditions only. Within one month after the apprentice has left his service, the master must take an oath before a justice that the man claimed was bound apprentice. A court of summary jurisdiction may order the officer under whose command the apprentice is, to give him up to his master. Except by such order, an apprentice cannot be taken out of the service, and he must have been bound an apprentice for four years, and have been under the age of sixteen when bound. A claimed apprentice is not bound to serve his time as a soldier after finishing his apprenticeship.

Claim of master to apprentice.

The same provisions apply to indentured la-

Indentured  
labourer.

bourers in a colony, except that, if a labourer is imported at any expense, he may be claimed, although above twenty-one years of age, and although bound for a less period, or at an older age than above specified.

*Regulations at present in force regarding Terms  
of Service and Re-engagement.*

Under the framework of the Army Act, as above sketched, the Secretary of State fixes or modifies by regulations the actual conditions and terms of service.

Terms of  
service at  
present.  
Q. R., sec.  
xix. para.  
19-21.

The regulations at present in force as regards enlistment, re-engagement, and extension of service, as recently altered,<sup>1</sup> are as follows:—

The term of service for all arms, except the Foot Guards and the Post Office Corps,<sup>2</sup> is—

1. *Short service*—that is, seven years with the colours, to be extended to eight years if serving abroad, and five or four years with the reserve.

2. The household cavalry, schoolmasters, armourers, master tailors, boys, and some others,

<sup>1</sup> July 1888.

<sup>2</sup> The Post Office Corps was formed in August 1882, to accompany the late expedition to Egypt. It consists of volunteers from the Post Office Volunteer Corps, who are employed in the Post Office: they were specially enlisted for three years with colours, three years' reserve, but not to be retained with the colours more than six months after cessation of hostilities.

are enlisted for *long service*—that is, twelve years with the colours.

3. For the Foot Guards, short service is to be three years with the colours.

The following tables show the present arrangement as to terms of extension of army service and re-engagement.

A warrant officer may at any time extend his army service to twelve years, and the extension will be carried out by the general commanding.

[TABLE A.

**TABLE**  
**EXTENSION OF**

(a) Non-commissioned officers of any branch of the service.	On the expiration of a year's probation as non-commissioned officer, not below the rank of corporal, bombardier, or 2d corporal.
(b) Non-commissioned officers of any branch of the service who failed to exercise the right referred to in paragraph (a). Bandsmen, pipers, and artificers of any branch of the service. Soldiers enlisted for not less than six years with the colours. (General Order, 94, 1883.)	At any time after completing three years' service.
(c) Lance-corporals and acting bombardiers.	During the last year of their army service.
(d) Officers' servants serving at depots.	During the last year of their army service.
(e) Trumpeters, drummers, buglers (enlisted for short service).	During the last year of their army service.
(f) Men enumerated in classes (c), (e).	On embarkation for foreign service.
(g) Gunners of the Royal Artillery selected for transfer to the Coast Brigade.	After completing five years' service.
(h) Privates of the Foot Guards (if enlisted for three years with colours, and nine years with the reserve).	At any time during their service with the colours.

## A.

## SERVICE.

Have the right to extend their service to twelve years with the colours. This right to be exercised within one month of the expiration of the probationary service.	The competent military authority to carry out the extension will be the general officer commanding.
May be allowed to extend their service to twelve years with the colours on the recommendation of their commanding officer.	General officer commanding.
May be allowed to extend their service to ten years with the colours on the recommendation of their commanding officer.	At home, or in the colonies, the adjutant - general. In India, the commander-in-chief.
May be permitted to extend their service from year to year, provided their total service with the colours does not exceed nine years.	The adjutant-general.
May be allowed to extend their service to twelve years with the colours, provided that the total number extended does not exceed one-fourth of the men of this class in the battalion or regiment.	The general officer commanding.
May, on the recommendation of their commanding officer, be allowed to extend their service to complete such a period (not exceeding ten years) with the colours.	At home, or in the colonies, the adjutant - general. In India, the commander-in-chief.
May be allowed to extend their service to ten years with the colours on the recommendation of their commanding officer.	At home, or in the colonies, the adjutant - general. In India, the commander-in-chief.
May be allowed to extend their service to seven years, and subsequently when in their seventh year, to twelve years with the colours.	General officer commanding.

## TABLE

## RE-ENGAGE

(a) Warrant-officers and serjeants.	At any time after they have completed nine years' army service.
(b) Corporals, bombardiers, 2d corporals, bandsmen, pipers, and artificers.	At any time after they have completed nine years' army service.
(c) Trumpeters, drummers, and buglers.	During the twelfth year of their army service.
(d) Schoolmasters.	During the twelfth year of their army service.
(e) Other soldiers.	During the twelfth year of their army service.
(f) Armourers.	In accordance with sec. vii. pars. 86 and 87, Queen's Regulations.
(g) Privates of the Foot Guards.	During the twelfth year of their army service.

B.

MENT.

Have the right to re-engage, subject only to the veto of the Secretary of State for War.	The competent military authority to carry out the re-engagement will be the general officer commanding.
May be allowed to re-engage on the recommendation of their commanding officer.	The general officer commanding.
May be allowed to re-engage on the recommendation of their commanding officer.	The general officer commanding.
Have the right to re-engage, subject only to the veto of the Secretary of State for War.	The adjutant-general.
Will be permitted to re-engage if of good character and specially recommended by their commanding officer.	The adjutant-general.
In accordance with sec. vii. pars. 86 and 87, Queen's Regulations.	The general officer commanding.
May be allowed to re-engage on the recommendation of their commanding officer.	The adjutant-general.



Recent temporary modifications. Memorandum presented to Parliament, 1883.

Of the provisions in these tables, the modifications which have recently been approved, and which are only adopted until further orders, are—

1. Permission to privates to extend their service, after completing three years, to twelve years with the colours, with the privilege of re-engaging in their twelfth year for a second period, and for pension, if physically fit, and approved by commanding officer.

2. New enlistment for the Foot Guards (three years, with power of extension to seven and twelve). Besides which bounties of £2 are offered (*a*) to men in regiments having a battalion in India, who will extend their army service to twelve years with the colours; also (*b*) to men returning from India, who are willing to extend, to complete in the Guards, the remainder of their twelve years.

These arrangements profess to attempt to supply a temporary deficiency in the ranks, and not to aim at a return to long service. By the latest accounts, the annual supply of recruits has not fallen off, but several causes have led to a deficiency in the established numbers.<sup>1</sup>

<sup>1</sup> This deficiency is said to be caused by the enlistment of 10,000 additional men at the time of the Franco-German War, 1870-71; enlistment during the last six months has been at the rate of 37,000 a-year.

*Offences as to Enlistment.*

Penalty on unlawful recruiting is £20 on summary conviction. Any person recruiting without lawful authority is liable.

Unlawful recruiting.  
A. A., sec. 98.

A person is punishable for knowingly making a false answer to a justice on being attested, by imprisonment up to three months on summary conviction; and if the recruit has been attested, he may be tried either by court-martial or by civil court. The competent authority to decide is any officer having authority to convene a district court-martial for the trial of the offender.<sup>1</sup> Rules of Procedure, 127. See also p. 28.

False answer on attestation.  
A. A., sec. 99.

*Miscellaneous as to Enlistment.*

After a man has received pay for three months, he is deemed to have been duly attested or re-engaged, and cannot claim his discharge on account of any error or illegality in his enlistment.

Validity of enlistment.  
A. A., sec. 100.

A person in pay as a soldier (even though not legally attested) is deemed to be a soldier for all purposes of the Act until he claims

<sup>1</sup> He should be dealt with by court-martial under sec. 33 if he is to be retained in the service, but by civil power if he is to be discharged.

his discharge, but if he does so, he must be discharged with all convenient speed. This is to provide for the case of a man who has never been attested or re-engaged. He cannot evade punishment on that plea.

Definitions.  
A. A., sec.  
101.

When not prescribed otherwise (Rules of Procedure, 127), competent military authority in Part II. of the Army Act means the commander-in-chief or the adjutant-general. Also "reserve" in the same means the first-class army reserve.

## CHAPTER VIII.

## GENERAL PROVISIONS.

*Billeting, Impressment, Exemptions, Courts of Requests, Jurisdiction, Penalties applicable to Civilians, Persons subject to Military Law, Application, Definitions.*

- \* A ROUTE issued under the authority of the Secretary of State, entitles the holder to billets and carriages, and cannot be questioned.<sup>1</sup> Justices and constables are bound to carry out such billeting and provision of carriages on the mere production of route by commanding officer.

Billeting  
and impress-  
ment.  
A. A., secs.  
102-121.

The following persons are liable to provide billets: Keepers of victualling houses, which term includes inns, livery stables, ale-houses, houses of sellers of wine, spirits, &c., by retail.

The following persons are exempt: Private houses, canteens, distilleries, certain vintners of

<sup>1</sup> A route is made to prove itself—that is to say, it is evidence until the contrary is proved.

- \* London, shop where sale of drink is not the principal dealing, house licensed to sell beer or cider not to be drunk on the premises, house of foreign consul.

Billeter is bound to supply lodging and attendance for officer, and lodging, attendance, and food for soldier, also stable and forage for horse.

Annual list of keepers of victualling houses, and of persons liable to provide carriages, are kept by the police authorities in every place.

Prices authorised by Parliament, also regulations as to distances and weights, are published yearly in schedule to the Army Annual Act.

For regulations as to grant of billets and carriages, see Army Act, secs. 108 and 113.

Certain offences in relation to billeting are punishable on summary conviction — if committed by constable, by fine from 40s. to £10; by keeper of a victualling house, by fine from 40s. to £5; by officer or soldier,<sup>1</sup> by fine up to £50.<sup>2</sup>

The officer or soldier who demands billets, carriage, or animals, must pay the authorised sum, or send an account to the Secretary of State.

Her Majesty can, when a state of emergency

<sup>1</sup> Can also be punished by court-martial (Army Act, sec. 30, p. 26).

<sup>2</sup> For details, see Army Act, secs. 109, 110, 111.

\* exists, authorise general or field officers commanding to issue requisitions of emergency, upon which justices are bound to issue warrants for the requisite carriages, animals, and vessels, and the Secretary of State causes payment to be made. Canal, river, or lock tolls are not demandable for vessels under a requisition of emergency; a toll-keeper demanding toll is liable to fine up to £5. Carriages and horses of every description, and all manner of vessels, may be impressed, and may be used to convey persons as well as baggage. This requisition, if purporting to be signed by the authorised officer, is evidence until the contrary is proved.

Requisition  
of emer-  
gency.

Offences in relation to impressment are punishable, whether committed by constable, provider of the article impressed, officer, or soldier,<sup>1</sup> in a similar manner to those relating to billeting, by fine.<sup>2</sup>

Fraudulent offences in connection with billeting and impressment—*i. e.*, forging a route, personating any one authorised to demand billets, &c., producing a false document, purporting to be a route—are punishable by imprisonment up to three months on summary conviction.

<sup>1</sup> Can also be punished by court-martial (Army Act, sec. 31, p. 27).

<sup>2</sup> For details, see Army Act, secs. 116, 117, 118.

\*

## EXEMPTIONS.

*Exemptions of Officers and Soldiers from certain Tolls.*

Exemption  
from tolls.  
A. A., sec.  
148.

Officers, soldiers, their horses, baggage, prisoners, on duty, or on the march, are exempt from all tolls. But vessels carrying the same along a canal are liable to payment of tolls.<sup>1</sup> In crossing ferries in Scotland, half the ordinary rate only has to be paid. Persons demanding or receiving such toll, in contravention of the Army Act, are liable to a fine from 10s. to £5, on summary conviction.

*Exemption of Soldiers in respect of Civil Process.*

Exemption  
from civil  
process.  
A. A., sec.  
144.

Soldiers cannot be taken out of the service, or be compelled to appear before a court of law, except on account of a crime which is punishable by law with fine or imprisonment, or for debt or damage exceeding £30. A person may, however, proceed to execution against a soldier other than against his person, or military kit, or equipment.

(This is not to interfere with apprentices and labourers being taken out of the service as authorised.)

<sup>1</sup> Except on requisition of emergency.

\*

*Exemption from Execution.*

A soldier is liable to maintain his wife and children, or bastard children; but execution cannot be issued against his person or military equipment, nor is he liable to punishment for deserting or neglecting to maintain these relations.<sup>1</sup>

Maintenance  
of wife and  
children.  
A. A., sec.  
145.

The Secretary of State, if satisfied of the desertion or neglect, *must*<sup>2</sup> order stoppage of the soldier's pay, not exceeding 6d. a-day for a serjeant, and 3d. for lower rank.

When proceedings are taken against a soldier quartered out of the jurisdiction of the court, the process is to be served on his commanding officer, and a sum of money, sufficient to defray soldier's expenses to and from the court, must be sent with the summons. No process can be served on a soldier under orders for foreign service.

<sup>1</sup> A soldier who falsely represented himself as single on attestation may be claimed by his parish for wife desertion, in which case his commanding officer will discharge the man, handing him over to a constable holding a warrant for his apprehension. Queen's Regulations, sec. xix. par. 259.

<sup>2</sup> Until this session of Parliament (1882-83) the Secretary of State was not *obliged*; "must" has now been substituted for "may" (Army Annual Act, 1883).



\* *Exemption from Municipal Offices and from Jury.*

Officers not  
to be sheriffs  
or mayors.  
A. A., sec.  
146.

Officers of regular forces on full pay cannot be sheriffs or mayors, or hold any office in a municipal corporation.

Exemption  
from jury.  
A. A., sec.  
147.

All soldiers of the regular forces are exempt from serving on juries.

Officers of the army, militia, or yeomanry are exempt from serving on juries in England.<sup>1</sup> This seemingly is only an exemption, as regards a grand or a common jury, from being placed on the list of jurors; and if an officer's name is on the list, he is bound to serve. Exemption should be claimed in August and September, when the lists are made out.<sup>2</sup>

#### COURTS OF REQUESTS IN INDIA.

A. A., secs.  
148-151.

The Army Act provides for the recovery by civilian creditors of debts incurred by officers and other persons subject to military law (other than soldiers) when serving in India; such debts being recoverable, if the debtor is within the jurisdiction of a civil court, before such court, and elsewhere before a military court of requests.

<sup>1</sup> 33 & 34 Vict. c. 77, s. 9.

<sup>2</sup> Manual of Military Law.

- \* A commanding officer,<sup>1</sup> before convening a court of requests, must be careful to see that the claimant is not a soldier, that the claim does not exceed 400 rupees, and that there is no court of small causes in the place, otherwise the court convened by him would have no jurisdiction. If the claim exceeds 400 rupees; recourse must be had to a civil court or court of small causes.

Members, minimum three, if practicable, five; the president in no case to be under the rank of captain, if possible a field-officer. All members must have five years' commissioned service.

The court is sworn to duly administer justice according to the evidence.

Witnesses are sworn as before a court-martial. Provisions as to perjury and declarations in lieu of oath apply to these courts as to courts-martial.

Court on adjudging payment may either award Judgment. execution against the debtor's property other than his arms and equipment, or order payment by instalments of pay, not exceeding one-half the debtor's pay, while he is in India, until the amount is made good.

If execution is awarded, the orders of the commanding officer are final, and neither he nor

<sup>1</sup> Commanding officer of any military station has power to convene.

- \* any other acting under him will incur liability for anything done in carrying these into effect.

If the debtor does not receive pay or public money, he may be arrested by the commanding officer of the place, and imprisoned within the place for a period not exceeding two months, unless the sum be paid sooner.

A civil court or court of small causes can, like a court of requests, either stop the pay of a debtor or award execution, and in awarding and enforcing execution, will be guided by the ordinary rules of procedure of such court. \*

#### JURISDICTION.

Not to be  
tried twice.  
A. A., sec.  
167.

Status.  
A. A., sec.  
158.

No person, if convicted or acquitted, can be tried again by court-martial for the same offence.<sup>1</sup>

If a person, while subject to military law, commits an offence, he may be punished for that offence by court-martial, though he may have ceased to be subject to military law (changed his status) before he is tried. But the trial must take place within three months after he has ceased to be under military law, except in the case of mutiny, desertion, and fraudulent enlistment, which can be tried at any time.

<sup>1</sup> A man has not been convicted (legally) until the proceedings have been confirmed.

A prisoner, although discharged, remains under military law during the term of his sentence of imprisonment or penal servitude.

An offender may be tried in any place where he may be, if within the jurisdiction of an officer authorised to convene general courts-martial.

Place.  
A. A., sec.  
159.

If a person is tried in a different place from that where the offence was committed, he cannot be subject to other punishment than he would be liable to there. (This enactment seems unnecessary, as the same law—the Army Act—applies everywhere.)

A. A., sec.  
160.

No person can be tried by court-martial for an offence after three years have elapsed, except for mutiny, desertion, and fraudulent enlistment. And if a soldier has served three years continuously in an exemplary manner,<sup>1</sup> he cannot be tried for any previous desertion (except desertion on active service) or fraudulent enlistment, but in the case of fraudulent enlistment all prior service is forfeited.

Limitation  
of time of  
trial.  
A. A., sec.  
161.

A person subject to military law is not to be exempted from the civil law by reason of his military status; but a civil court in awarding sentence shall have regard to any punishment

Adjustment  
of military  
and civil  
law.  
A. A., sec.  
162.

<sup>1</sup> Exemplary manner means "no entry in regimental defaulter book for a continuous period of three years."—Queen's Regulations, sec. vi. par. 37.

passed by a military court. And a person subject to military law who has been acquitted or convicted by civil court, cannot be tried by court-martial for the same offence.

Any officer who refuses to assist in giving over, or who obstructs the police in apprehending any officer or soldier under his command accused of any civil offence, is, on conviction by the civil power, guilty of a misdemeanour.

#### PUNISHMENT OF CIVILIANS.

*Legal Penalties applicable under the Army Act to  
Civilians in matters respecting her Majesty's  
Forces.*

\* Any person falsely representing himself as a deserter is liable, on summary conviction, to imprisonment not exceeding three months.<sup>1</sup>

Pretended  
deserter.  
A. A., secs.  
152, 153.

Any person inducing, or assisting, or aiding a soldier to desert is liable, on summary conviction, to imprisonment not exceeding six months.<sup>1</sup>

Unlawful  
recruiting.  
A. A., sec.  
98.

Unlawful recruiting is punishable by a fine not exceeding £20, on summary conviction.<sup>2</sup>

False an-  
swer.  
A. A., sec.  
99.

A recruit making false answer to a justice

<sup>1</sup> The same provisions apply in regard to the militia, secs. 24 and 25 Militia Act, 1882.

<sup>2</sup> See also p. 229.

\* on attestation is liable, on summary conviction, to three months' imprisonment.<sup>1</sup>

The penalty for trafficking in commissions (except the army purchase commissioners) is a fine of £100, or six months' imprisonment by civil court: if the offender is an officer, and is tried by court-martial, he is liable to be dismissed the service.<sup>2</sup>

Trafficking  
in commis-  
sions.  
A. A., sec.  
155.

Any person who wilfully makes a false oath or declaration as regards the identity of the recipient of any military pay is liable to the punishment of perjury. The offence of personation consists, as regards military matters, in any person falsely representing himself to any authority, military, naval, or civil, to be a particular man in the regular, reserve, or auxiliary forces. The punishment may be imprisonment, not exceeding three months, or fine not exceeding £25. A person may be indicted under the False Personation Act, 1874, instead of under this section. Personating with intent to obtain money or property, is punishable under that Act with penal servitude for life.

False per-  
sonation.  
A. A., sec.  
142.

If a civilian witness—

- (1) Fails to attend, on being summoned, at a court-martial,
- (2) Refuses to take an oath legally required,

A. A., sec.  
126.

<sup>1</sup> See also p. 229.

<sup>2</sup> See also chap. ii. p. 34.

- \* (3) Refuses to produce a document legally required,
- (4) Refuses to answer a question legally requiring an answer,
- (5) Commits a contempt of court,

The president can certify the same to any court of law having power to commit for a like offence, and that court may thereupon deal with the case as if committed against itself.

A. A., sec.  
148.

A person demanding toll, in contravention of the Army Act, is liable, on summary conviction, to a fine not exceeding £5. (See p. 233.)

A. A., sec.  
129.

A counsel can be punished for contempt of court committed before a court-martial. (See chap. v. p. 146.)

A. A., sec.  
156.

Any one who purchases, or connives at purchasing, soldiers' necessaries, equipment, stores, &c., or is in possession of them, and cannot satisfy the court that he came by them lawfully, is liable, on summary conviction, to a fine not exceeding £20, and treble the value of the property, and for a second offence to fine, or six months imprisonment. Being unlawfully in possession of the same articles is punishable with fine not exceeding £5. A person charged with either of these offences, and the husband or wife of such person may, if he or she think fit, be examined like an ordinary witness.

- \* Besides these cases, civilians become subject to military law under certain circumstances, and then are dealt with by the Army Act, either as officers or soldiers, as the case may be: for example, a political agent accompanying troops on active service is subject as an officer; a camp-follower becomes subject as a soldier. (See below.)

PERSONS SUBJECT TO MILITARY LAW.

*The following persons are subject to military law as officers:—*

Persons subject to military law as officers.  
A. A., sec. 175.

Officers of regulars on the active list, and officers not on the active list who are employed in military service under an officer of regulars who is subject to military law (Army Annual Act, 1883); officers of permanent staff of auxiliary forces; officers of militia; all persons serving as officers with troops raised by her Majesty out of the United Kingdom and India, and under command of regular officers (this is not to interfere with any colonial Act). Yeomanry and volunteers when in command of men subject to military law, or when their corps is on actual military service, or when with their consent they are attached to troops which are subject to military law, or when ordered on duty. Every person



- \* under orders of Secretary of State, or Governor-General of India, accompanying troops in official capacity on active service abroad. Any person accompanying a force on active service who holds a pass from a commanding officer entitling him to be treated as an officer.

Persons sub-  
ject to mili-  
tary law as  
soldiers.  
A. A., sec.  
176.

*The following are subject to military law as soldiers :—*

Regular soldiers. Permanent staff of auxiliary forces ; force raised by her Majesty out of United Kingdom and India, and under command of officers of regulars ; but this is not to interfere with any colonial Act. Pensioners employed in military service. Reserve when called out (for training, for duty, in aid of civil power, or on permanent service). Militia during preliminary training, when being exercised alone or with regulars, or when attached to latter, or when embodied. Yeomanry when exercised alone, with regulars, or with militia subject to military law, when attached to or acting with regulars, actual military service, aid of civil power.

Volunteers when exercised with regulars, or with militia subject to military law, when attached to or acting with regulars, when on actual military service ; but the commanding officer must inform his men when they are about to enter any service which would render them liable to military

\* law, so that they may have an opportunity of abstaining. Followers, and all persons employed by her Majesty's troops on active service abroad. But in case of a mixed force, containing Indian forces, followers who are natives of India shall be subject to Indian military law.

Indian or colonial law may apply to Indian or colonial troops, whether within or without India or a colony; but when such forces are serving with her Majesty's regular forces, so far as Indian or colonial law has not provided, the Army Act shall apply.

Indian and  
colonial  
forces.  
A. A., sec.  
177.

### *Auxiliary Forces.*

When auxiliary forces or pensioners become subject to military law, they become so in all respects as if they were part of the regular forces, except that their conditions of service cannot be affected.

Auxiliary  
forces.  
A. A., sec.  
178.

The effect of this is, that officers of these forces, when subject to military law, can sit indiscriminately on courts-martial for the trial of offenders in the regular or auxiliary forces.

The provisions of the Army Act, as far as regards Part II. Enlistment, do not apply to auxiliary forces, except so far as to persons in those forces who enlist in the regular forces, and except so far as provisions may be applied by any other Act (Militia Act). Subject to certain modi-

Auxiliary  
forces.  
A. A., sec.  
181.

- \* fications,<sup>1</sup> the provisions of the Army Act with respect to billeting and impressment of carriages, apply to auxiliary forces when subject to military law.

An officer of auxiliary forces may hold the office of sheriff, mayor, or in a municipal corporation, although his battalion is assembled for annual training.

When a volunteer is subject to military law, dismissal may be awarded as a punishment, either by court-martial or by commanding officer.

*Application of Military Law to Marines.*

Marines.  
A. A., sec.  
179.

As the Admiralty, by commission from the Crown, exercises the powers of the Crown in relation to the Navy, the powers which by the Army Act are vested in her Majesty, in relation to the Army, are given to the Admiralty with respect to the Royal Marines.

General  
court-mar-  
tial.

A general court-martial cannot be convened for the trial of a marine except by an officer authorised by a warrant from the Admiralty, and except in the case of a marine serving with regular forces abroad, when there is no such officer present,—in which case an officer

<sup>1</sup> An order is substituted for a route, &c. See Army Act, sec. 181 (4).

\* authorised to convene general courts-martial may try him.

A district court-martial for trial of a marine may be convened by any officer having authority to convene district courts-martial for trial of a regular soldier. District court-martial.

General and district courts-martial on marines may be confirmed by convening officer, or by any officer authorised to confirm general or district courts-martial, as the case may be, for the trial of regular soldiers.

Anything authorised by the Army Act to be done by or before Secretary of State, commander-in-chief, adjutant-general, judge-advocate-general, the commander-in-chief in India or in any presidency, or officer commanding in any colony, or by royal warrant, may be done by the Admiralty as regards the Royal Marines.

Admiralty regulations are made legal evidence of the facts stated in them.

The formalities in the enlistment of marines will be those contained in Part II. Army Act, but the terms, conditions, transfer, and forfeiture of service remain under Acts relating to marines. Marines are subject to the Naval Discipline Act when on the books of any commissioned ship. \*

*Modification of the Army Act with respect to  
Troops serving in India.*

Troops serving in India.  
A. A., sec.  
180.

Case of contempt of court by a civilian may be dealt with by a court-martial in the same way as if committed before a civil court in that part of India.

Her Majesty's Indian forces.

The Army Act does not affect or prejudice Indian military law for natives in her Majesty's Indian service, but courts-martial may be convened under its authority.

Indian military law means articles of war, orders, &c., under the authority of the Indian Government, and they apply to native soldiers wherever serving.

The Governor of a Presidency can suspend proceedings of a court-martial (within his Presidency) on an officer or soldier of her Majesty's Indian forces.

Courts-martial may sentence an officer of the Indian staff corps to forfeit all or part of his army or staff service, or both.

A Governor of a Presidency can reduce a warrant-officer not holding an honorary commission to a lower grade of warrant rank, or remand him to regimental duty in the rank held by him previous to his appointment.

The Army Act applies to hospital apprentices

as if they were warrant-officers not holding honorary commissions.

Part II. of the Army Act (Enlistment) does not apply to Indian forces.

*Special Provisions as to Warrant-Officers.*

The Act applies to a warrant-officer not holding an honorary commission as if he were a non-commissioned officer, except as follows:—

Warrant-officers.  
A. A., sec. 182.

He cannot be punished by commanding officer, nor tried by regimental court-martial. If tried by district court-martial, he is liable to following punishments only — dismissal; suspension from rank and pay for any period; reduction to a lower place in list, or to an inferior class; or, if originally enlisted as a soldier and transferred to serve as warrant-officer, reduction to the ranks. But a warrant-officer reduced or remanded to the ranks cannot be required to serve as a private soldier. Presidents of courts-martial for trial of warrant-officers must never be under the rank of captain.

*Special Provisions as to Non-Commissioned Officers.*

1. The obligation on a commanding officer to deal summarily with soldiers in cases of drunkenness does not apply to non-commissioned officers.

Non-commissioned officers.  
A. A., sec. 183.

2. The commander-in-chief, and in India the commander-in-chief and the commander-in-chief of any presidency, may reduce a non-commissioned officer to a lower grade, or to the ranks, and may dismiss a schoolmaster.

3. Non-commissioned officers may be reduced to a lower grade, or to the ranks, in addition to, or without other punishment.

4. Non-commissioned officers sentenced by court-martial to penal servitude or imprisonment shall be deemed to be reduced to the ranks. An army schoolmaster cannot be reduced to the ranks, but may be sentenced by court-martial to penal servitude or imprisonment, or to lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment, shall be deemed to be dismissed.

A commanding officer may order an acting non-commissioned officer to revert to his permanent grade for misconduct or otherwise.<sup>1</sup>

*Special Provisions as to Application of the Army  
Act to Persons not in her Majesty's Service.*

Civilians.  
A. A., sec.  
184.

When an offence has been committed against the Act by a person not belonging to her Majesty's

<sup>1</sup> For definition of ranks and appointments and acting appointments, see Queen's Regulations, sec. vii. para. 112 *et seq.*

forces, but at the time subject to military law, he may be tried by any court-martial except regimental, convened by an authorised officer within whose command the offender may be. And such person is deemed to be under the command of the commanding officer of the corps to which he is attached ; or, if not attached, under the command of any officer for the time being named by the general commanding as his commanding officer ; or if no such officer is prescribed, then under command of the general officer commanding himself. But he cannot be punished by commanding officer.

*Law on board her Majesty's Ships.*

Her Majesty's forces, including auxiliary forces, when on board one of her Majesty's commissioned ships, are under naval law, and nothing in the Army Act can affect that law.

Application  
to troops on  
board com-  
missioned  
ships.  
A. A., sec.  
186.

Troops on board a commissioned ship are under command of the commanding officer of the ship. Any act against the good order and discipline of the ship is deemed to be an act against sec. 40, Army Act.<sup>1</sup>

Q. R., sec.  
xvii. par.  
78.

If an act is committed by an officer or soldier, which the commanding officer of the troops con-

<sup>1</sup> Conduct to the prejudice of good order, &c., p. 30.



siders can only be dealt with by district or general court-martial, the offender shall, with the consent of the commanding officer of the ship, be disembarked at the first opportunity for trial on shore.

The officer commanding ship may order summary punishment to be inflicted on any soldier, but only with the concurrence of the officer commanding the troops. Should the latter not concur, the case must be referred to superior military authority. He can also put under arrest or imprisonment any offender on his own authority.

Commanding officer of ship may authorise commanding officer of troops to assemble a regimental court-martial for the trial of a non-commissioned officer; but sentence cannot be carried out until the commanding officer of the ship has concurred. Should he not do so, execution of sentence must be deferred till disembarkation.

Commanding officer of troops will receive from the commanding officer of ship written authority to award punishment authorised in the Summary Punishments Table<sup>1</sup>—Queen's Regulations, sec. xvii. par. 74.

<sup>1</sup> Order in Council, 6th February, under sec. 88 Naval Discipline Act, 1866.

*Law on board Ship not Commissioned.*

The soldier carries with him on board ship the military law to which he was subject on embarkation, so that an officer having power to convene courts-martial at that place would have power to convene a court-martial on board ship. On the other hand, if a man is tried on board ship, the sentence can be confirmed and executed at the place of disembarkation, by the officer having power to convene and confirm had the court-martial been held there.

Applica-  
tions to  
ships.  
A. A., sec.  
188.

## DEFINITIONS.

*Definitions of Terms used in the Army Act.*

- \* The expression "active service" means when a force is engaged in military operations against an enemy, or in a country occupied by an enemy, or is in military occupation of a foreign country.

Active ser-  
vice.  
A. A., sec.  
189.

Further, power to *anticipate*, or to *prolong*, as it were, the period of active service, is given to the governor in a colony, and to the general when out of her Majesty's dominions, when it is necessary by reason of the imminence, or of the recent existence, of active service. This is done by an official proclamation, which takes effect from the date of its appearance in general

\* orders, and the troops are then deemed to be on active service,<sup>1</sup> and can be punished accordingly. The period of declaration of a state of active service is not to exceed three months, but may be renewed from time to time. Consent of Secretary of State must be obtained if possible.

Channel  
Islands.  
Isle of Man.  
A. A., sec.  
187.

The Army Act applies to the Channel Islands and to the Isle of Man, as if they were part of the United Kingdom, except that the provisions relating to billeting and impressment of carriages do not extend to these places.

Soldiers sentenced to penal servitude or to imprisonment in the Channel Islands or in the Isle of Man, are to be treated as if sentenced in a colony.<sup>2</sup>

For the purposes of the Army Act relating to militia, the Isle of Man is deemed to be a colony.

Definitions.  
A. A., sec.  
190.

*Secretary of State* means one of her Majesty's principal Secretaries of State.

*Officer* includes every description of military officer, including warrant-officer holding an honorary commission.

*Non-commissioned officer* includes an acting non-commissioned officer, an army schoolmaster

<sup>1</sup> A recent enlargement of the definition rendered necessary by affairs in South Africa.

<sup>2</sup> That is to say, they must be brought to the United Kingdom to undergo their punishment, if it is penal servitude, or over one year's imprisonment.

- \* when not a warrant-officer, and a warrant-officer not holding an honorary commission except as modified by sec. 182 Army Act.

*Soldier* includes every person subject to military law except officer.

*Superior officer* includes a non-commissioned officer.

*Regular forces* are those in continual service, including marines and Indian forces. When the reserve forces are subject to military law, they become regular forces.

*Reserve forces* means the army reserve force and the militia reserve force.

*Auxiliary forces* means militia, yeomanry, and volunteers.

*Corps*<sup>1</sup> means any military body declared to be a corps by royal warrant: when applied to the cavalry, artillery, or engineers, means regiment, brigade, or other body.

*Military decoration* includes good-conduct badge.

*Military reward* includes annuity, gratuity, good-conduct pay, or pension.

<sup>1</sup> As the corps is the unit for enlistment, and some other purposes, the Act empowers the Crown to declare any portion of forces a corps. Also in cases where not made so by warrant, a portion of forces employed on service, and not attached to any corps, become a corps for the purposes of the Act. See Army Circular, Oct. 1881.

\* *Enemy* includes armed mutineers, armed rebels, armed rioters, pirates.

*Colony* means Cyprus, and all parts of her Majesty's dominions except the United Kingdom, Channel Islands, Isle of Man, and India.

*Foreign country*—Any place not included in above.

*Beyond the seas*—Out of United Kingdom, Channel Islands, and Isle of Man.

*Oath* includes declaration, in cases where the latter is allowed instead of an oath.

*Superior court* means High Court of Justice in England and Ireland; Court of Session in Scotland.

*Civil court* means an ordinary court of criminal jurisdiction; includes a court of summary jurisdiction.

*Court of summary jurisdiction* means any person or persons to whom jurisdiction is given by the Summary Jurisdiction Acts;<sup>1</sup> in Scotland, sheriffs. A court of law includes a court of summary jurisdiction.

*Prescribed* means prescribed by any Rule of Procedure.

A year means twelve calendar months, and may be held to commence on any day in any month.<sup>2</sup> \*

<sup>1</sup> In England a court must consist of two justices or a stipendiary magistrate.

<sup>2</sup> Manual of Military Law.

The expression *commanding officer*, as used in R. P., 123. regard to courts-martial, execution of sentences, and powers of commanding officer, means in regard to any person, the officer whose duty it is under regulation, or by custom, to deal with a charge against that person.

In other cases the term is not so restricted, <sup>Q. R., sec. vi. par.</sup> and means an officer in the chain of command, which extends from the highest authority downwards.

## CHAPTER IX.

*SYNOPSIS OF PARTS OF THE RESERVE FORCES ACT, 1882; THE MILITIA ACT, 1882; THE ARMY ACT, 1881.*

(45 and 46 Vict. c. 48.)

## RESERVE FORCES ACT.

THIS Act is a consolidation, with a few alterations, of the previously existing enactments with respect to the army and militia reserve forces. It came into operation on the 1st January 1883.

*Part I.—Army Reserve.*

Establish-  
ment of  
army re-  
serve.  
R. F. A.,  
sec. 3.

Army reserve is to consist of two classes:—

*Class I.—Number* is to be settled from time to time by Parliament; *liable*, when called out, to serve anywhere; to *consist* of men who, having served in the regular forces, have been transferred to the reserve, or have been enlisted or re-engaged for the reserve. To establish a *supplemental re-*

*serve*, the first-class may be divided into two divisions, and in that case men in the second division are not liable till the whole of the first division have been called out.

*Class II.*—*Number* to be settled from time to time by Parliament; *liable* when called out to serve at home *only*; to *consist* of out-pensioners, or men who have served in the regulars not less than their full term, and have been enlisted or re-engaged for the reserve.

Every man who is not transferred to the army reserve must enter by enlistment or re-engagement.

R. F. A.,  
sec. 4.

Reserve can be called out in aid of civil power by a Secretary of State, or by any commanding officer in any town or district on a written requisition of a justice of the peace; in Ireland by the Lord-Lieutenant.

Called out  
in aid of  
civil power.  
R. F. A.,  
sec. 5.

An army reserve man, *whether otherwise subject to military law or not*, who commits the following offences, is liable to be taken into military custody, and to be tried by court-martial under the Army Act, or to be tried by a court of summary jurisdiction:—

Punish-  
ment.  
R. F. A.,  
sec. 6.

1. Fails, without reasonable excuse, on two consecutive occasions, to comply with regulations with respect to payment of the Army Reserve. (Certificate of paymaster is made legal



evidence of absence when a reserve man fails to appear at place of payment.)

2. Fails, without reasonable excuse, to attend at any place when required under this Act. (A certificate signed by the officer present at such place for inspecting or other purpose, is legal evidence of such non-attendance.)

3. Uses threatening or insulting language, or behaves in an insubordinate manner, to any person who is in the execution of his office, and who would be his superior officer if he (the reserve man) was subject to military law.

4. Fraudulently obtains pay or other sum of money contrary to regulations.

5. Fails, without reasonable excuse, to comply with regulations.

If a reserve man commits any of above offences, or the offence of personation, in presence of any officer, that officer may order such man, in lieu of being taken into military custody, to be taken into custody by any constable, for the purpose of being dealt with by civil power.

Reserve men are exempt from parish offices.

R. F. A.,  
sec. 7.

### *Part II.—Militia Reserve.*

Militia re-  
serve.  
R. F. A.,  
sec. 8.

Militia Reserve is established. The number is to be settled from time to time by Parliament.

Secretary of State may enlist such militiamen from time to time as are willing, not exceeding the prescribed number (if any) out of any particular corps.

Term of service six years, or for remainder of the man's militia service. A militia reserve man re-engaged in the militia, may also be re-engaged in the militia reserve for the same period.

Service.  
R. F. A.,  
sec. 9.

*Part III.—General.*

Army reserve men are liable to be called out for training within the United Kingdom for a period of twelve days, or for twenty drills, and militia reserve men for fifty-six days, which will be in substitution for the annual training to which they are liable as militiamen.

General.  
Training.  
R. F. A.,  
sec. 11.

When called out for training, reserve men may be attached to regular or auxiliary forces.

In case of *imminent national danger* or *great emergency*, her Majesty can by proclamation call out the reserves, or either of them, on permanent service, and the Secretary of State may direct from time to time what particular men are to be called out. If Parliament is sitting, the occasion must first be communicated to that assembly; if not sitting, the occasion must be declared in Council, and notified by the procla-

Permanent  
calling out.  
R. F. A.,  
sec. 12.

mation. Her Majesty can in the proclamation give power to Secretary of State to give, revoke, or vary such directions, as may be necessary.

Assembly of  
Parliament.  
R. F. A.,  
sec. 13.

If, when reserves are ordered to be called out, Parliament is not sitting, and will not assemble for ten days, a proclamation must be issued for the meeting of Parliament within ten days.

Punishment  
for absence.  
R. F. A.,  
sec. 15.

If a reserve man fails to attend if called out *on permanent service* or *in aid of the civil power*, he can, whether otherwise subject to military law or not, be tried by court-martial, and can be found guilty of *deserting* under sec. 12 Army Act, or of absence without leave, under sec. 15 Army Act.

If a reserve man fails to attend if called out *for annual training*, he can only be tried by court-martial for *absence* without leave under sec. 15 Army Act.

Instead of trial by court-martial, the reserve man may be tried for the above offences by a court of summary jurisdiction, and in any case he may be taken into military custody.

Punish-  
ment.  
R. F. A.,  
sec. 16.

Sec. 154 of the Army Act, which deals with the apprehension of deserters, is to apply to a reserve man who is a deserter or absent without leave. Any person falsely representing himself as a deserter or absentee from the reserve is

liable to imprisonment by civil court up to three months.

The procedure on illegal absence of a reserve man is the same as for a soldier, under sec. 72 of the Army Act, but the reserve man must have come up and become subject to military law and afterwards absented himself. A court may be assembled twenty-one days after such absence, although the period during which the man was subject to military law was less than twenty-one days, or has expired before the expiration of the twenty-one days.

Procedure  
on illegal  
absence.  
R. F. A.,  
sec. 19.

When a reserve man is absent when called out for training or permanent service, and remains absent for fourteen days, record is to be made in the prescribed manner in regimental books, and the record is conclusive proof of the fact of such absence.

Record of  
illegal ab-  
sence.

Notices to reserve men may be sent by post, or in the prescribed manner. Evidence of delivery at last abode of reserve man of notice addressed to him, is legal evidence that such notice was brought to his knowledge. Also publication in the prescribed manner in the parish in which the last abode of the reserve man is situated, is sufficient notice to that man, even should a copy not be served on him.

Notices.  
R. F. A.,  
sec. 24.

Constables, overseers, and inspectors of the

poor are required to serve notices and conform with orders and regulations under the Reserve Forces Act, and a penalty is imposed for default—namely, a fine not exceeding £20 if convicted by civil court.

Trial.  
R. F. A.,  
sec. 25.

The provisions of the Army Act as to the trial<sup>1</sup> of offences before military and civil tribunals are to apply to offences under the Reserve Forces Act.

The Act applies, for purposes of arrest, trial, and punishment, to the Channel Islands and the Isle of Man.<sup>2</sup>

Jurisdiction.  
R. F. A.,  
sec. 26.

An offence cognisable both by a court-martial and by civil court cannot be tried by both, but may be tried by either, as prescribed by regulation. Proceedings may be instituted against an offender, whether his reserve service has expired or not, within two months after the time at which his offence becomes known to the officer who has power to order trial, if the offender was apprehended at that time, and if not, then within two months after the time at which he was apprehended.

<sup>1</sup> Includes arrest, trial, punishment, and summary dealing with case by commanding officer.

<sup>2</sup> These two places are not included in the term United Kingdom, within which only the reserves can be called out for training, and within which only the second-class reserve are liable to serve.

The provisions contained in secs. 163 and 164 of the Army Act as to documentary evidence, are extended to proceedings under this Act. Evidence of civil convictions can be produced against a reserve man even when he is not subject to military law.

Evidence.  
R. F. A.,  
sec. 27.

Definitions are very similar to those of the Army Act.

R. F. A.,  
sec. 28.

Sec. 29 deals with repeal, and certain necessary provisions to connect the old law with the new Act. The whole of the Reserve Force Act, 1867, and the Militia Reserve Act, 1867, are repealed, and the fragment left unrepealed of the Army Discipline Act, 1879, and various other fractions of Acts relating to reserves.

R. F. A.,  
sec. 29.

Repeal.

Offences of reserve men against this Act, which are cognisable both by court-martial and by civil court, cannot be tried by the latter until sanction has been obtained in writing from an officer who has power to direct the offender to be tried by court-martial, or higher authority. A reserve man who enlists in the regulars is to be dealt with under sec. 33 of the Army Act, not sec. 13, and will generally be relegated to the reserve.

R. W.,  
Jan. 1883.  
Q. R., sec. vi.  
par. 135.

*Note.*—Men of the Army Reserve are not allowed to quit the United Kingdom, or to proceed to sea without obtaining permission from the commanding officer of their regimental district. Regulations under Army Act, secs. 78 and 90; Army Form D, 420.

## MILITIA ACT, 1882.

- \* This Act re-enacts, with certain modifications rendered necessary by recent changes in law (Regulation of the Forces Act, 1881, and Army Act, 1881), the Militia Act, 1875, which had consolidated divers enactments applicable to the militia. It came into force on January 1st, 1883.

Punish-  
ment for  
irregular  
enlistment.  
M. A., sec.  
10.

A person guilty of the following offences, whether otherwise subject to military law or not, is liable to be taken into military custody, and to be tried by court-martial, under sec. 32 or 34 of the Army Act, or to be tried by civil power.<sup>1</sup>

(1) Enlisting in the militia, after having been discharged with disgrace<sup>2</sup> from her Majesty's forces, or from the navy, without declaring the circumstances of his discharge.

(2) Is concerned, when subject to military law, in enlistment for militia of any man, when he has cause to believe that such man, by enlisting, commits an offence against the Army Act.

<sup>1</sup> As a rule, offences under this section will be dealt with by court-martial. They are to be referred to the general officer commanding, who may decide either way. Militia Regulations, 1883, par. 224.

<sup>2</sup> Discharge with disgrace has the same meaning as in the Army Act.

- \* (3) Wilfully contravenes, when subject to military law, any acts, orders, or regulations relating to enlistment of militiaman.

Militiamen may, subject to prescribed conditions, enlist in the regular forces, and in doing so are deemed to be discharged from the militia.

Enlistment  
in regular  
forces.  
M. A., sec.  
11.

Preliminary training of recruits is not to exceed six months; they may be trained by persons belonging to the regulars or militia. This is in addition to the annual training.

Preliminary  
training.  
M. A., sec.  
14.

Annual training is to be for not less than twenty-one, or more than twenty-eight days in one year; but her Majesty in Council may extend this term to fifty-six days, or reduce it to such time as may seem fit, or dispense with the annual training altogether.

Annual  
training.  
M. A., secs.  
16, 17.

In case of imminent national danger, or of great emergency, her Majesty in Council, by proclamation (the occasion being first communicated to Parliament, if sitting, or declared in Council, and notified in the proclamation, if not sitting), may order the militia to be embodied. Under the proclamation, a Secretary of State may, from time to time, give such directions as may be necessary.

Embodi-  
ment.  
M. A., sec.  
18.

If, when her Majesty orders the militia to be



\* embodied, Parliament is not to assemble within ten days, a proclamation calling Parliament together is to be issued.

Assembly of  
Parliament.  
M. A., sec.  
19.

Notice of  
time and  
place of  
attendance.  
M. A., secs.  
21, 22.

Notices of time and place of annual training or embodiment are to be served to each person, within reasonable time of the date fixed, either through the police or through the post; and also such notices must be published in the prescribed manner in the county or area to which the corps belongs. Evidence of the delivery of a letter containing a notice at the usual abode (which is that stated in his attestation, or subsequently notified) of a militiaman, is evidence that such notice was brought to the knowledge of the man. Further, the publication of notice in every parish in the county to which a corps belongs is sufficient notice to every man of that corps, even if a copy of such notice is not served upon him. An overseer of the poor or constable is liable to a fine of £20 for not conforming with the orders and regulations in force with respect to the service of notice.

Punishment  
for non-  
attendance.  
M. A., sec.  
23.

A militiaman, *whether otherwise subject to military law or not*, who fails to appear without reasonable excuse, at the time and place appointed for *embodiment*, is liable to be tried for desertion under sec. 12 Army Act; if only for *preliminary or annual training*, to be tried for absence, under

\* sec. 15 Army Act; or he may be tried by civil court, and, in any case, can be taken into military custody.<sup>1</sup>

Deserters or  
absentees.  
M. A., sec.  
24.

Sec. 154 of the Army Act, which deals with the arrest and committal of deserters by a court of summary jurisdiction, is made to apply to militiamen who are deserters or absentees.

*Fraudulent enlistment* under the Militia Act consists of the following offences:—

Fraudulent  
enlistment  
or false  
answer.  
M. A., sec.  
26.

(a) When, belonging to the militia, *when embodied*, without fulfilling the conditions enabling him to enlist or enter, enlists or enters any of the auxiliary or reserve forces, or navy.

(b) When, belonging to the reserve forces, *called out*, or to the yeomanry or volunteers, *on actual military service*, without having fulfilled the conditions enabling him to enlist, enlists in the militia.

The lesser crime of *making a false answer* is the same as in the text above, omitting the words, *when embodied, called out*, and, *on actual military service*.

A person who commits either of these offences, *whether otherwise subject to military law or not*, may be taken into military custody, and may be

<sup>1</sup> If there is no special reason for dealing with the case by court-martial, it should be dealt with by civil court. Militia Regulations, 1883. See also note, p. 271.

- \* tried either by court-martial or by court of summary jurisdiction.<sup>1</sup> In the former case, he is to be tried under sec. 13 Army Act for fraudulent enlistment, and under sec. 33 Army Act for false answer; in the latter case he is liable to three months' imprisonment.

An attempt to commit either of the above offences is provided against in a similar manner, except that the punishment by court-martial is limited to imprisonment, and by court of summary jurisdiction to one half the punishment authorised for the full offence.

Liability of  
deserter to  
further  
service.  
M. A., sec.  
27.

A militiaman who is delivered into military custody, or committed by a civil court as a deserter or absentee, or is convicted thereof, or is dealt with by commanding officer for that offence, is liable—

(a) If he has not completed his preliminary training, to attend the whole of the prescribed period, without any deduction.

(b) If his absence from annual training has amounted to fourteen days in any one year, he is

<sup>1</sup> As a rule, offences against sec. 26 should be tried by civil court; but cases are to be referred to the general officer commanding, who has power to decide as he thinks fit. *Militia Regulations*, 1883, par. 224. In all cases, however, where a militiaman is found serving in the regulars, and there is no objection to his retention in the army, punishment may be dispensed with, the required stoppages only being imposed. See also note, p. 271.

\* liable to serve, after the expiration of his term of militia service, an additional year for each year in which he has been so absent.

(c) If he was embodied at the time he committed the offence, or afterwards, he is liable to serve for an additional period equal to the time between date of committing the offence and his apprehension or surrender.

An offence cognisable both by court-martial and civil court cannot be tried by both, but may be tried by either, as fixed by regulation.<sup>1</sup> Proceedings may be instituted against an offender, whether his militia service has expired or not, within two months of the time at which the offence becomes known to his commanding officer if he was then apprehended, and if not, then within two months after the time at which he was apprehended. \*

*Note to Militia Act.*—The law as to the trial of a militiaman for desertion, and fraudulent enlistment, appears to require some explanation.

When a militiaman becomes subject to military law, he is liable in all respects like a regular soldier (Army Act, sec. 178); but as he is only so subject at certain stated times, the above enactments are necessary to punish offenders when they are not triable under the military code as regulars.

(1) A militiaman who *fails to appear*, without reasonable

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<sup>1</sup> A militiaman cannot be tried by civil court, until sanction has been given by his commanding officer, or some superior authority. Army Circulars, 1883 (8).

excuse, at the place for training, cannot be tried for desertion, but only for the lesser crime of absence without leave ; but if the militiaman *has come up*, and thereby rendered himself liable to military law (Army Act, sec. 176), and has *afterwards* absented himself, under such circumstances as would in the case of a regular soldier constitute desertion, he may be tried for that offence under Army Act, sec. 12, because, as has been mentioned, when subject to military law, he is treated in every way as a regular soldier.

(2) A militiaman cannot be tried for *fraudulent enlistment*, unless he was *embodied* at the time he committed the offence ; under any other circumstances a similar offence can only be tried as making a false answer on attestation. The explanation of this is that, although a militiaman, when subject to military law (as he is when out for training), is liable *generally* like a regular soldier, yet, since the crime of fraudulent enlistment is specially defined for a militiaman in the Army Act, sec. 13, and in the Militia Act, sec. 26, and as a militiaman when *not embodied* does not come within either definition, he cannot, under such circumstances, be tried for fraudulent enlistment. This liability, however, is not of much practical importance, because as a rule trial is dispensed with in these cases.—See note, p. 270.

#### SYNOPSIS OF SECTIONS OF THE ARMY ACT NOT MENTIONED ALREADY IN THIS WORK.

Sec. 71. Power to her Majesty to make regulations as to persons to be invested with command, and mode in which such command is to be exercised.

Sec. 132. Governors of prisons, or persons in charge of police stations, are bound to receive

prisoners sent them in pursuance of the Army Act; they are also obliged to take over from military custody any soldier, for a period not exceeding seven days, on a written order from a commanding officer, the object being to provide for the safe keeping of prisoners during a halt on the march.

Sec. 133. Power is given to Secretary of State and Governor - General in India to set apart buildings as military prisons, and parts of buildings as public prisons for soldiers—example, Millbank. It is also made lawful for Secretary of State to make regulations, which must be laid before Parliament, for military prisons, including infliction of corporal punishment, not exceeding twenty-five lashes, for certain offences committed by prisoners. In cases of suspicious death in a military prison in India, an inquest must be held.

Sec. 134. Soldiers are not to be confined longer than absolutely necessary in a prison which is not a military prison in India or colonies.

Secs. 166, 167, and 168 are the sections ordinarily inserted in modern Acts of Parliament for the recovery of fines, and the prosecution of offences, before justices of the peace, police magistrates, or, in Scotland, sheriffs, who are all referred to as a court of summary jurisdiction.

Sec. 169. Power is given to Governor-General of India to reduce any fine, and also to declare the equivalent local currency.

Sec. 170 provides for protecting persons acting under the Army Act. An action against such persons must be instituted within twelve months of the neglect or default complained of.<sup>1</sup>

Sec. 171. *Exercise of powers vested in holder of military office.*—The power held by one person may be exercised by another for the time being authorised according to the custom of the service. The object is to prevent legal difficulty in the usage of the army in delegating authority from one person to another.

Sec. 172. *Provisions as to warrants and orders of military authorities.*—Orders may be issued by any officer authorised in that respect. Example—An order by the commander-in-chief may be issued by the adjutant-general; by a general or commanding officer, by his aide-de-camp or adjutant, &c.

An order is not invalid because it deviates from the prescribed form.

<sup>1</sup> An action might be brought, for instance, against a member of a court-martial for acting without jurisdiction, or in excess of jurisdiction.

When a prisoner in military custody is delivered for conveyance to the commanding officer of a ship, the order of the military authority is sufficient warrant for the latter to keep him in custody.

Sec. 174. *Licences of canteens.*—The section empowers two justices to grant these to persons holding canteens under the authority of a Secretary of State or the Admiralty.

Sec. 185. *Special provisions as to prisoners and prisons in Ireland.*—Powers of Secretary of State in this respect are vested in Ireland in the General Prisons Board.

Sec. 191. *Commencement and duration of Act.*—Any reference in any Act, regulation, &c., to the Mutiny Act, or Articles of War, or to the Army Discipline and Regulation Act 1879, will be deemed to refer to the corresponding sections of this Act.

Sec. 192. *Application of Act.*—The Act applies to all soldiers, with certain exceptions. The terms of enlistment, being a species of contract between the sovereign and the soldier, cannot be altered without consent. A soldier, therefore, who enlisted before the commencement of this Act serves practically under his old contract as regards reckoning and forfeiture of service, transfer to reserve, discharge, &c. But on re-



engagement, extension of army service, or on his own consent, he comes under the new Act. For details, see the Act.

Sec. 193. *Repeal*.—The whole of the Army Discipline and Regulation Act 1879 is repealed, and parts of several other Acts. See the section.

## APPENDIX I.

## FORMS OF CHARGES.

### STATEMENT OF OFFENCE

### OFFENCES IN RESPECT OF MILITARY SERVICE.

## Section 4.

- (1a.) Shamefully { abandoning  
delivering up } { a garrison.  
a place.  
a post.  
a guard.
- (1b.) Using  
means } compel { a governor  
to } induce { a commanding  
officer  
(or other person) } shamefully { abandon { a garrison } which it  
to } { deliver up } { a place  
a post  
a guard } was his  
duty to  
defend.
- (2.) Shamefully casting away his { a<sup>ms</sup>  
ammunition } { tools } in the presence of the enemy.
- (3a.) Treacherously { holding correspondence with } { giving intelligence to } the enemy.
- (3b.) Treacherously  
Through cowardice } sending a flag of truce to the enemy.
- (4a.) Assisting the enemy with { arms.  
ammunition.  
supplies.
- (4b.) Knowingly { harbouring } { protecting } an enemy not being a prisoner.
- (5.) When a prisoner of war, voluntarily { serving with } { aiding } the enemy.
- (6.) Knowingly doing, when on active service, an act { her Majesty's forces.  
calculated to imperil the success of } { part of her Majesty's forces.
- (7.) Misbehaving  
Inducing others to misbehave { before the enemy in such manner as to show  
cowardice.

*Section 5.*

- (1.) When on active service, without { in order to secure prisoners.  
orders from his superior officer, { in order to secure horses.  
leaving the ranks { on pretence of taking wounded men to the rear.
- (2.) When on active service, wilfully { destroying } property without orders from his  
damaging { superior officer.
- (3a.) When on active service, being taken prisoner { by want of due precaution.  
through disobedience of orders.  
through wilful neglect of duty.
- (3b.) After being taken prisoner when on active service, failing to rejoin her Majesty's service when able to rejoin the same.
- (4.) When on active service, without due { holding correspondence with } the enemy.  
authority { giving intelligence to  
sending a flag of truce to }
- (5.) When on active service, { by word of mouth } spreading reports { alarm.  
in writing } calculated to cre- { dependency.  
by signals } ate unnecessary  
[otherwise]
- (6.) When on active service, { in action } using words calcul- { alarm.  
previously to going } lated to create { dependency.  
into action }

*Section 6.*

- (1A.) [When on active service,] leaving his commanding officer to go in search of plunder.
- (1B.) [When on active service,] leaving his { guard  
pleket } without orders from his superior  
patrol } officer.  
post }
- (1c.) [When on active service,] forcing a safeguard.
- (1d.) [When on active service,] { forcing } a soldier when acting as sentinel.  
striking }
- (1ma.) [When on active service,] impeding { the provost-marshal  
an assistant provost-  
marshal } legally { under { the pro-  
an officer } exercising } vost-  
a non-commissioned } authority } on behalf of { marshal.  
officer  
[other person]
- (1mb.) [When on active service, and] when { the provost-marshal  
called on, refus- } an assistant provost-  
ing to assist in } marshal  
the execution of { an officer } legally { under { the pro-  
his duty { a non-commissioned } exercising } on behalf of { vost-  
officer } authority } marshal.  
[other person]
- (1ra.) [When on active service,] doing violence to { provisions } to the forces.  
a person bringing { supplies }
- (1rb.) [When on active service,] { properly } of an inhabitant of { the country in  
committing an offence { person } of a resident in { which he was  
against the }

- (1g.) [When on active service,] { house  
breaking into a { [other place] } in search of plunder
- (1h.) [When on active service,] by { discharging firearms  
drawing swords  
beating drums  
making signals  
using words  
[any means whatever] } intentionally occasioning false alarms { in action.  
on the march  
in the field.  
[elsewhere.] }
- (1ia.) [When on active service,] treacherously { parole  
watchword  
countersign } to a person not entitled to receive it.
- (1ib.) [When on active service,] treacherously { parole  
watchword  
countersign } different from what he received.
- (1j.) [When on active service,] { detaining  
appropriating  
to his own  
irregularly } corps  
battalion  
detachment } contrary to orders issued in that respect { provisions  
supplies } proceeding to the forces.
- (1k.) When a soldier acting as sentinel [on active service,] { sleeping on his post.  
being drunk on his post.  
leaving his post before he was regularly relieved. }
- (2a.) By { discharging firearms  
drawing swords  
beating drums  
making signals  
using words  
[any means whatever] } negligently occasioning false alarms { in action.  
on the march.  
in the field.  
[elsewhere.] }
- (2aa.) Making known the { parole  
watchword  
countersign } to a person not entitled to receive it.
- 2ab.) Without good and sufficient cause giving a { parole  
watchword  
countersign } different from what he received.

## MUTINY AND INSUBORDINATION.

## Section 7.

- (1.) { Causing  
Conspiring with other  
persons to cause } a mutiny  
sedition } in forces belonging to her Majesty's { regular forces.  
reserve forces.  
auxiliary forces.  
navy. }
- (2a.) Endeavouring to seduce a person in her Majesty's { regular forces  
reserve forces  
auxiliary forces  
navy } from allegiance to her Majesty.
- (2b.) Endeavouring to persuade a person in her Majesty's { regular forces  
reserve forces  
auxiliary forces  
navy } to join in { a mutiny.  
sedition. }
- (3a.) Joining in { a mutiny  
sedition } in forces belonging to her Majesty's { regular forces.  
reserve forces.  
auxiliary forces.  
navy. }

- (3b.) Being present at and not using his utmost endeavours to suppress } a mutiny } in forces belonging { regular forces.  
sedition } to her Majesty's { reserve forces.  
auxiliary forces.  
navy.
- (4.) After coming to the knowledge of { an actual mutiny } in forces { regular forces  
an intended mutiny } belonging { reserve forces  
actual sedition } to her { auxiliary forces  
intended sedition } Majesty's { navy } { failing to inform  
without delay  
his commanding  
officer of  
the same.

## Section 8.

- (1.) { Striking  
Using violence to  
Offering violence to } his superior officer, being in the execution of his office.
- (2a.) [When on active service,] { striking  
using violence to  
offering violence to } his superior officer.
- (2b.) [When on active service,] using { threatening  
insubordinate } language to his superior officer.

## Section 9.

- (1.) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.
- (2.) [When on active service,] disobeying a lawful command given by his superior officer.

## Section 10.

- (1.) When concerned in a fray, { refusing to obey  
striking  
using violence to  
offering violence to } an officer who ordered him into arrest.
- (2.) { Striking  
Using violence to  
Offering violence to } a person in whose custody he was placed.
- (3.) Resisting an escort whose duty it was { to apprehend him.  
to have him in charge.
- (4.) Breaking out of { barracks.  
camp.  
quarters.

## Section 11.

- (1.) Neglecting to obey { general  
garrison  
[other] } orders.

## DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE.

## Section 12.

- (1.) { [When on active service,]  
[When under orders for active  
service,] } deserting her Majesty's service  
attempting to desert her Majesty's service.

- (2.) { [When on active service,  
[When under orders for  
active service,] } { persuading  
endeavouring to persuade  
procuring  
attempting to procure } a person subject to military law to desert from her Majesty's service.

## Section 13.

- (1.) and (2.) Fraudulent enlistment.**

## Section 14.

- (1.) Assisting a person subject to military law to desert her Majesty's service.
- (2.) When cognizant of { the desertion of a person } giving notice to his commanding officer.  
 { the intended } { subject to } taking some  
 { desertion } { military law } steps in his  
 { } { not forthwith } power to { deserter } to be  
 { } { } cause the { intending } apprehended.  
 { } { } { } deserter

## Section 15.

- (1a.) Absenting himself without leave.
- (2a.) Failing to appear at the place of { parade } appointed by his commanding  
rendezvous } officer.
- (2b.) Without leave, before he was re- { parade } appointed by his commanding  
lieved, going from the place of { rendezvous } officer.
- (2c.) Without urgent necessity, quitting the ranks.
- (3.) When in camp { beyond the limits } general } orders, without a pass or  
When in garrison { fixed by } garrison } written leave from his  
When [elsewhere] found { in a place pro- [other] } commanding officer.  
hibited by }
- (4.) Without leave from his commanding officer or due cause, absenting himself from school when duly ordered to attend there.

### DISGRACEFUL CONDUCT.

## Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

## Section 17.

- [illegible]



## Section 21.

- (1a.) Unnecessarily detaining a prisoner in { arrest  
confinement } without bringing him to trial.
- (1b.) Unnecessarily failing to bring a prisoner's case before the proper authority for investigation.
- (2.) After having committed a person to the custody of { an officer, a non-commissioned officer, a provost-marshal, an assistant provost-marshal, } failing without reasonable cause to deliver { at the time of the commitment, or as soon as practicable, within 24 hours after such commitment } to the officer to the non-commissioned officer to the provost-marshal to the assistant-provost-marshal { into whose custody the person was committed an account in writing signed by himself of the offence with which the person so committed is charged.
- (3.) When in command of a guard, failing { as soon as he was relieved from his { guard } duty } to give in writing the name of the officer to whom he was ordered to report, the prisoner's name. prisoner's offence so far as known to him. name } of the officer rank } of the {person} } by whom the prisoner was charged. charged. } by whom the prisoner was committed to his custody.

## Section 22.

- (1.) When in { arrest, confinement, prison, } { escaping. attempting to escape. }  
(other lawful custody,)

## OFFENCES IN RELATION TO PROPERTY.

## Section 23.

- (1.) Conniving at the exaction of an exorbitant price for a { house } stall } let to a sutler.
- (2.) { Laying a duty upon Taking a fee in respect of Taking an advantage in respect of Being interested in } { the sale of provisions the sale of merchandise } brought into { a garrison a camp a station a barrack a [place] } in which { com-mand. he has } authority.
- { the sale of { provi-sions } for the use of some of her Majesty's forces, }  
the pur-chase of { stores }



## Section 24.

- (1.) { Making away with by  
Being concerned in  
making away with  
by { pawning  
selling  
destruction  
[otherwise] { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.
- (2.) Losing by neglect { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.
- (3.) Making away with by { pawning  
selling  
destruction  
[otherwise] } a military decoration granted him.
- (4.) Willfully injuring { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
property belonging to { a comrade.  
an officer.  
a regimental mess.  
a regimental band.  
a regimental institution.  
public property.
- (5.) Ill-treating a horse used in the public service.

## Section 25.

- (1.) In a { report  
return  
muster roll  
pay list  
certificate  
book  
route  
[other  
document] { made by him,  
signed by him,  
of the con-  
tents of  
which it was  
his duty to  
ascertain the  
accuracy. } knowingly making { a false statement.  
being privy to the { a fraudulent statement.  
making of { an omission with intent  
to defraud.
- (2.) { Knowingly { defraud, { suppressing  
and with { injure some { making away with  
intent to { person, { defacing  
{ altering } a document which { preserve  
it was his duty to { produce.
- (3.) Where it was his official duty to make a declaration respecting any matter, knowingly making a false declaration.

## Section 26.

- (1.) When signing a document relating to
- |   |  |
|---|--|
| $\left\{ \begin{array}{l} \text{pay,} \\ \text{arms,} \\ \text{ammunition,} \\ \text{equipments,} \\ \text{clothing,} \\ \text{regimental} \\ \text{necessaries,} \\ \text{provisions,} \\ \text{furniture,} \\ \text{bedding,} \\ \text{blankets,} \\ \text{sheets,} \\ \text{utensils,} \\ \text{forage,} \\ \text{stores,} \end{array} \right\}$ | $\left\{ \begin{array}{l} \text{leaving in blank a material part for} \\ \text{which his signature was a voucher.} \end{array} \right\}$ |
|---|--|
- (2.)  $\left\{ \begin{array}{l} \text{Refusing to} \\ \text{By culpable neglect} \\ \text{omitting to} \end{array} \right\}$  make  $\left\{ \begin{array}{l} \text{a report} \\ \text{send a return} \end{array} \right\}$  which it was his duty to  $\left\{ \begin{array}{l} \text{make.} \\ \text{send.} \end{array} \right\}$

## Section 27.

- (1.) Making a false accusation against  $\left\{ \begin{array}{l} \text{an officer} \\ \text{a soldier} \end{array} \right\}$  knowing such accusation to be false.
- (2.) In making a complaint where he thought himself wronged,  $\left\{ \begin{array}{l} \text{knowingly making a false state-} \\ \text{ment affecting the character of} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{an officer.} \\ \text{a soldier.} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{knowingly and wilfully suppressing} \\ \text{a material fact.} \end{array} \right\}$
- (3.) Falsely stating to his commanding officer that he had  $\left\{ \begin{array}{l} \text{been guilty of} \\ \text{served in and} \\ \text{been dis-} \\ \text{charged from} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{desertion.} \\ \text{fraudulent enlistment.} \\ \text{desertion from the navy.} \\ \text{a portion of the regular forces.} \\ \text{a portion of the reserve forces.} \\ \text{a portion of the auxiliary forces.} \\ \text{the navy.} \end{array} \right\}$
- (4.) Making a wilfully false statement to a  $\left\{ \begin{array}{l} \text{military officer} \\ \text{justice} \end{array} \right\}$  in respect of the prolongation of furlough.

## OFFENCES IN RELATION TO COURTS-MARTIAL.

## Section 28.

- (1.) When duly  $\left\{ \begin{array}{l} \text{summoned} \\ \text{ordered to attend} \end{array} \right\}$  as a witness before a court-martial, making default in attending.
- (2.) Refusing to  $\left\{ \begin{array}{l} \text{take an oath legally required by a court-martial to be taken.} \\ \text{make a solemn declaration legally required by a court-martial to be made.} \end{array} \right\}$
- (3.) Refusing to produce a  $\left\{ \begin{array}{l} \text{power} \\ \text{control} \end{array} \right\}$  legally required by a court-martial to be produced by him.
- (4.) Refusing when a witness to answer a question to which a court-martial might legally require an answer.
- (5.) Being guilty of contempt of a court-martial by  $\left\{ \begin{array}{l} \text{using} \\ \text{causing} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{insulting} \\ \text{an interruption} \\ \text{a disturbance} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{language.} \\ \text{in the proceedings of such} \\ \text{court.} \end{array} \right\}$

*Section 29.*

- (1.) Wilfully giving } oath  
false evidence } solemn de- } before { a court-martial.  
when exam- } claration } { a court } authorized by the Army Act, 1881,  
ined on } } { an officer } to administer an oath.

## OFFENCES IN RELATION TO BILLETING AND IMPRESSMENT OF CARRIAGES, &amp;c.

*Sections 30, 31.*

For these see Rules of Procedure, Appendix I. Cases under these sections very rarely occur.

## OFFENCES IN RELATION TO ENLISTMENT.

*Section 32.*

- (1.) After having } discharged with disgrace from a } enlisting in the regu- }  
been } part of her Majesty's forces, } lar forces without } discharge.  
} dismissed with disgrace from } declaring the cir- } dismissal.  
the navy, } cumstances of his }

*Section 33.*

- (1, 2.) Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested.

*Section 34.*

- (1.) Being concerned in the enlistment for service in the regular forces of a man when he } knew } such man to be so circumstanced  
} had reason- } that by enlisting he committed  
} able cause } an offence against the Army Act,  
to believe } 1881.
- (2.) Wilfully } the enactments of the Army } in a matter re- } enlistment } of soldiers  
con- } Act, 1881, } lating to the } attestation } of the  
traven- } [other enactments] } } } regular  
ing } the regulations of the service } } forces.

## MISCELLANEOUS MILITARY OFFENCES.

*Section 35.*

- (1.) Using { traitorous } words regarding the Sovereign.  
disloyal }

*Section 36.*

- (1.) Without } ver- } the numbers of } some forces } at such time  
due } bally } the position of } some magazines of the } and in such  
autho- } in writ- } } forces } manner as to  
rity } ing } some stores of the } have produc-  
} by sig- } forces } ed effects in-  
} nal } } } jurious to  
[other- } } } } her Majes-  
wise] } } } } ty's service.

## Section 37.

- (1.) { Striking } a soldier.  
 { Ill-treating }
- (2.) After receiving { an officer, } unlawfully detaining  
 the pay of { a soldier, } unlawfully refusing to pay } the same when due.

## Section 38.

1. { Fighting  
 Promoting  
 Being concerned in } a duel.  
 { Conniving at fighting }
- (2.) Attempting to commit suicide.

## Section 39.

- (1.) On application { neglecting } to deliver over to the  
 being made { refusing } civil magistrate { an officer } accused of an of-  
 to him, { to assist in the lawful } a soldier { fence } fence punish-  
 apprehension of { a civil } able by a civil  
 court.

## Section 40.

- (1.) { An act  
 Conduct } to the prejudice of good order and military discipline.  
 { Disorder  
 Neglect }

## Section 41.

- (1-4.) { When on active service—  
 In Gibraltar,  
 In some place not in the United Kingdom  
 or Gibraltar, and more than one hundred  
 miles as measured in a straight line from  
 any city or town in which he can be  
 tried by a competent civil court for the  
 offence, } committing { treason.  
 the of } murder.  
 fence of } manslaughter  
 } treason-felony.  
 } rape.
- (5.) Committing a civil offence—that is to say [*state the offence according to English law, either using legal terms—e.g., arson, larceny, larceny from the person, assault, robbery with violence, &c.; or in ordinary language—e.g., stealing, injuring property, setting fire to a house, &c.*].

## Section 155.

- (1-3.) { Negotiating  
 Acting as agent  
 for  
 Aiding  
 Conniving at } { the { sale } of a commission in her Majesty's regular  
 { purchase } forces.  
 the { giving } of any valu- } promotion in  
 { receiv- } able con- } retirement  
 { ing } sideration } from  
 { of any } in respect } employment  
 } in }  
 any exchange made in man- } sum of  
 ner not authorised by regu- } money  
 lations made in pursuance } { has { given.  
 of the Regimental Ex- } [con- } been { received.  
 changes Act, 1875, and in } sider- }  
 respect of which a } deration]

## APPENDIX II.

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### *Form of Oath for Member of Court-Martial.*

Oath to  
member of a  
court-mar-  
tial.  
A. A., sec.  
52.

“You, \_\_\_\_\_, do swear, that you will well and truly try the prisoner [or prisoners] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.”

### *Form of Oath for Judge-Advocate.*

Oath to  
judge-ad-  
vocate.  
R. P., 27.

“You do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.”

*Form of Oath for an Officer attending for the purpose of Instruction.*

"You do swear that you will not divulge the sentence of this court-martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God."

Oath to officer attending for instruction.

*Form of Oath for a Shorthand Writer.*

"You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial and such other matters as you may be required, and will when required deliver to the court a true transcript of the same. So help you God."

Shorthand writer.

*Form of Oath for an Interpreter.*

"You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you God."

Interpreter

*Form of Oath for a Witness.*

The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth. So help you God.

Oath for witness.  
R. P., 80.

Where a person is permitted to make a solemn declaration instead of being sworn, the form of declaration is the same in each case as the oath, but substituting "I, \_\_\_\_\_, do solemnly promise and

Solemn declaration.  
R. P., 28.

declare that I" for "you, , do swear that you;" and omitting the words, "So help you God."

The declaration must be taken before some person authorised by the rules of procedure to administer the oath.

### FORM OF SUMMONS.

#### *Form of Summons to a Civil Witness.*

To

Whereas a court-martial has been ordered to assemble at on the day of 18 , for the trial of , of the regiment. I do hereby summon and require you, *A* *B* , to attend, as a witness, the sitting of the said Court at on the day of , at o'clock in the forenoon [and to bring with you the documents herein-after mentioned, namely, ], and so to attend from day to day until you shall be duly discharged, whereof you shall fail at your peril.

Given under my hand at on the day of 18 .

(Signature) .

Convening Officer [*or* Judge-Advocate  
*or* President of the Court, *or* Com-  
manding Officer of the prisoner].

## APPENDIX III.

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### EXAMINATION QUESTIONS FOR CAPTAINS.

1. Into how many parts is the Army Act divided, and what are these parts?

2. Give, in brief terms, the persons subject to military law, as specified in the Army Act.

3. When a person, not subject to military law, is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by interrupting its proceedings, state your duty as president, and what further steps should be taken with reference thereto.

4. What are the regulations as to the assembly of courts of inquiry (not such as are held for the purpose of determining the illegal absence of soldiers) as regards their composition, powers, and mode of procedure?

May the proceedings of such courts be given in evidence against an officer or soldier?

5. What special rules are enacted with respect to general and district courts-martial, as to their being convened; their composition; and power to try offences committed by any officer or soldier?

6. What are the powers and duties of a deputy-judge-advocate at a general court-martial?

Has an officiating judge-advocate the same powers and duties as a deputy-judge-advocate?

By whom and how are such functionaries appointed?

7. What limit is imposed upon the right of "cross-examin-



ation" and "re-examination," if a question is raised as to the reception of certain evidence? State the mode of procedure for determining it.

8. In what position does a soldier stand who has been tried and sentenced by court-martial, but whose sentence has been remitted, or when the proceedings have been quashed on account of their illegality?

9. What is the procedure under the following circumstances?  
viz.:—

- (1.) If a court-martial, after the commencement of the trial, is, by death or otherwise, reduced below the number named in the order convening the court.
- (2.) If, during the trial, the president dies or is otherwise unable to attend, and the court is not thereby reduced below the legal minimum.
- (3.) Impossible to continue trial in consequence of the illness of the prisoner.
- (4.) If court be dissolved, may prisoner be tried again?
- (5.) In the case of equality of votes, whether on the "finding," "sentence," or "on any question" arising after the commencement of the trial.

10. On the examination of the record of the proceedings of a court-martial, what are the several points on which the confirming officer must satisfy himself?

11. How are the orders promulgated for the reassembly of a court-martial for the purpose of revision?

What rules are laid down for the guidance of the court under such circumstances?

12. Give a definition of the expression "enemy," also of the expression "on active service," as applied to a person subject to military law.

13. Why is a code of military law necessary? To what extent is it recognised by the civil authorities?

14. What are the regulations with regard to the punishment of the offence of drunkenness when committed by a private soldier? When is it allowable for a commanding officer to add confinement to barracks to any fine he may impose?

15. Give, very briefly, the rules for summary punishment made by the Secretary of State under the Army Act of 1881.

16. What information should be given to a prisoner before being brought to trial; and what assistance should be rendered towards preparing his defence?

17. State fully the duties of a court-martial before it proceeds to the arraignment of the prisoner.

18. Who is the prosecutor at a court-martial, and what are his duties?

19. What should the confirming officer do, if, in his opinion, the sentence were inadequate? What would also be the result if a court-martial, during its proceedings, had admitted illegal evidence?

20. If the finding or sentence be sent back for revision, what should the court do?

21. Define "hearsay" evidence. What objections are usually raised against its reception, and in what cases would it be admissible?

22. In what form is the "finding" of a court-martial to be recorded? What follows on a finding of "not guilty," and what, in all cases, becomes of the proceedings?

23. Can a military court-martial be convened on board a ship commissioned by her Majesty?

24. What special provisions are made, with regard to the punishment of warrant officers, by the Army Act of 1881?

25. Give fully the powers of an officer commanding a detachment—as to summary punishments, and convening courts-martial; also his powers on board a ship.

26. What are the limits of time beyond which, according to the Army Act, military offences are barred from court-martial cognisance? If any, state to what offences such would not apply.

27. When an officer is charged with an offence under the Army Act, state explicitly the procedure to be observed.

28. Explain fully what is meant by a "charge-sheet."

29. Before proceeding with a case against a soldier, what is the duty of the commanding officer? What instructions are laid down for his guidance in regard to exemption from trial in certain cases of desertion or of fraudulent enlistment?

30. What are the powers of a commanding officer in awarding summary punishment affecting a soldier's pay?

What are the rights of a soldier's appeal against such award?

31. State what you know about courts of inquiry on illegal absence.

32. What is the procedure at a court-martial when two or more prisoners are tried together, and any evidence is tendered by any one or more of the prisoners?

33. What is the duty of the president of a court-martial, or in his absence that of the senior member, when in consequence of anything arising while the court are sitting, the court are unable, by reason of dissolution or of the absence of the president, to continue the trial? If the court be dissolved before the finding, or in the case of a finding of guilty before the sentence, what effect would such have upon the proceedings and upon the prisoner?

34. What summary punishments may now be awarded by courts-martial?

Are the rules laid down in the Army Act in relation thereto to be observed by the Royal Marine forces?

35. If the sentence of a court-martial be informally expressed, or if the punishment awarded by the court be in excess of the punishment authorised by law, state fully the powers vested in the confirming officer.

36. What is the procedure where a court-martial find that either the prisoner is unfit by reason of insanity to take his trial, or that he committed the offence with which he is charged but was insane at the time of the commission thereof?

State under what circumstances, if any, the prisoner may be tried by the same or another court-martial for the offence with which he was originally charged.

37. Has the Army Act of 1881 of itself any force?

What is necessarily required to secure the constitutional principle of the control of Parliament over the discipline requisite for the government of the army?

38. Under what circumstances is a soldier liable to be taken out of her Majesty's service?

What are the liabilities of a soldier in respect to the maintenance of his wife or children, legitimate or illegitimate?

39. By what tribunal may a person be dealt with who falsely represents himself to be a deserter or absentee without leave from the army or militia reserve?

To what punishment on conviction is such person liable?

40. To what punishment is a person subject to military law liable who commits either of the following offences? viz. :—

- (1.) Unnecessarily detains a person in confinement without bringing him to trial.
- (2.) Or, fails taking his case before the proper authority for investigation.

As prosecutor in such a case, what would you have to prove so as to enable the court to infer that the accused could have brought the prisoner to trial or his case for investigation?

On the other hand, if you were the accused, and the above facts proved, what would lie with you to prove in defence?

41. Give, in brief terms, a general outline of the rules of evidence on the following points, viz. :—

- (a.) Evidence as to character.
- (b.) What statements are admissible.
- (c.) Documentary evidence, primary and secondary.
- (d.) Circumstantial evidence.
- (e.) Admissions or confessions as evidence.

42. What rules are now enacted in respect of power as to the restitution of stolen property?

43. Define mutiny, desertion, lawful command.

44. Is it competent for a court-martial to confront any two or more conflicting witnesses? if so, how should it be done, and at what stage of the proceedings?

45. Explain fully the law in respect to a witness at a court-martial reading his evidence, or referring to notes, whether made by himself or by others.

What privileges have the opposite party in respect thereof?

46. In what position are officers of the militia and militiamen in respect of being subject to the Army Act; also the permanent staff of militia regiments?

47. What is the procedure at a court-martial where a plea of

"guilty" is recorded on a charge? also in the case where there are other charges in the same charge-sheet to which the plea recorded is "not guilty"?

48. What are the general rules laid down in respect to a prisoner having a person to assist him during his trial, whether he be a legal adviser or an officer subject to military law?

49. Into how many classes is the establishment of the army reserve divided, and of what do those classes consist?

#### QUESTIONS FOR LIEUTENANTS.

50. Explain what is meant by the following expression as used throughout the Army Act—"Every person subject to military law."

51. What exception is made to the rule that a person shall not be liable to be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins?

52. May a person who has been tried and punished by a court-martial for an offence, be afterwards tried by a civil court for the same offence? Name any rule bearing thereon.

53. Name in brief terms the several documents that may be used as evidence, either before a civil court or a court-martial.

54. To what punishment are persons subject to military law liable, who are convicted by a general court-martial of any of the following offences? viz. :—

- (1.) Deserts, or attempts to desert, from her Majesty's service.
- (2.) Persuades, endeavours to persuade, procures, or attempts to procure, any person subject to military law to desert from her Majesty's service;
- (a.) If any such offence was committed when on active service, or under orders for active service; and
- (b.) If any such was committed under any other circumstances.

55. What are the powers of a general court-martial with regard to awarding punishment for the following offences?—

(1.) Disobeys in such a manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office.

(2.) Disobeys any lawful command given by his superior officer.

56. State what privileges a soldier has the right to demand under certain summary awards by his commanding officer, and what these awards are.

57. What is the regulation with regard to defining the periods of imprisonment summarily awarded by a commanding officer?

58. Name the offences only for which the words "*disgraceful conduct*" should be used in framing charges.

59. Owing to force of circumstances, a court-martial becomes composed of an equal number of officers; what is the law where there is an equality of votes?

How should a court proceed when the verdict is one of acquittal?

60. Although officers sitting on a court-martial may belong to the same or to different corps, or may be unattached to any corps, and may try persons attached to any corps, state what officers are prohibited from sitting as president or members.

61. How should a soldier on furlough proceed who is detained by sickness or other casualty rendering any extension of such furlough necessary, whether he be in the locality of a garrison town or not?

62. What deductions may be made from the ordinary pay due to a soldier of the regular force?

After such stoppages, what residue must a soldier be allowed a-day?

63. "*Persons subject to military law.*"—State what offence would properly come under the head of "knowingly does, when on active service, any act calculated to imperil the success of her Majesty's forces, or any part thereof."

64. What punishments may be awarded by general courts-martial for the following named offences?—

(1.) "Treacherously makes known the parole or watchword to any person not entitled to receive it; or, without

good and sufficient cause, gives a parole or watchword different from what he received."

- (2.) Makes known the parole or watchword to any person not entitled to receive it; or, without good and sufficient cause, gives a parole or watchword different from what he received.

If there is any difference in the amount of award for each offence, explain the reason.

65. For what period of service may persons be enlisted? What change of conditions of service may from time to time be made by the Secretary of State?

66. What are the regulations with regard to reckoning and to forfeiture of service by soldiers?

67. By whom and under what authority are the different courts-martial held? viz. :—

- (1.) General.
- (2.) Field General.
- (3.) District.
- (4.) Regimental.

Who has the power to confirm the proceedings?

68. What steps should be taken when a soldier makes a confession of desertion or of fraudulent enlistment?

69. Under what circumstances may the written deposition of an absent witness be accepted by a court-martial?

70. Give a definition of the expression, "non-commissioned officer," more particularly as applied to the appointment or to the reduction of those holding lance rank.

71. When a commanding officer determines to stop a soldier's pay for absence, state what constitutes a day to enable him to give such an award.

72. Enumerate such penal deductions or stoppages of pay that may be made by sentence of courts-martial or otherwise from the ordinary pay due to a soldier of the regular forces.

73. State when officers, soldiers, &c., are exempt from tolls; also under what circumstances a soldier of her Majesty's regular forces is liable to be taken out of her Majesty's service.

74. In what manner does the Army Act limit the jurisdiction of regimental courts-martial.

75. A detachment of the line is stationed at a place where a militia battalion is assembled for training ; is it legal to mix the officers, in order to form a regimental court-martial to try a soldier of the line ? Give reasons for your answer.

76. Specify the full powers of punishment that a district court-martial possesses in the case of a private soldier.

77. Under what circumstances, irrespective of the prisoner's right of challenge, is an officer disqualified from sitting on a court-martial ?

78. What are the provisions of the Army Act, sec. 9, relative to the offence of disobeying the command of a superior ?

79. A court-martial acquits a prisoner on all the charges against him ; does such finding require confirmation ? Is it liable to revision ? State the provisions of the Act on this subject.

80. Give a short explanation of the rule of evidence that "it is sufficient to prove the substance of the issue or charge."

81. Private A. is found drunk and creating a serious disturbance in barracks, during which he has violently struck Private B. with his rifle ; he had been drunk a month ago, and also on two other previous occasions within the year. How may he be punished for the drunkenness ? He is in any case to be tried by court-martial for the rest of the offence. Give an outline of the charge.

82. Explain fully the state of the law as to the application of the president's casting vote in decisions given by courts-martial.

83. State fully the jurisdiction of a regimental, a district, and a general court-martial. What is the difference between a field general and a summary court-martial as regards powers and composition ?

84. Give the regulations for the fines for drunkenness which may be awarded by a commanding officer. What is the maximum fine a court-martial can award for this offence ?

85. Define the expressions "commanding officer," "non-commissioned officer," "superior officer," "reserve forces," "beyond the seas," "military decoration," and "military reward."



86. Under what circumstances can a soldier claim to be tried by court-martial, and before what court would he be arraigned?

87. How should the summary punishment by a commanding officer (both over and under seven days), by the civil power, and by court-martial, be recorded?

88. Under what circumstances would an officer be ineligible to sit on a court-martial?

89. What is the procedure in case the prisoner (a) declines to plead; (b) pleads "guilty"; and (c), after having entered a plea of "not guilty," withdraws it and pleads "guilty"?

90. What should be the rank of the president of the different classes of court-martial? What are his duties?

91. By whom are the witnesses before a court-martial examined, and how is their evidence taken? How is the presence of a civil or a military witness procured, either before or after the assembly of the court?

92. State, generally, what classes of documents are held to be legal evidence before a court-martial.

93. What do you understand by "forcing a safe-guard"? To what punishment is a person, subject to military law, liable, if he commits this offence?

94. What offences are classed under the head of "disgraceful conduct"? What is the maximum punishment that may be awarded on conviction?

95. To what punishments are persons subject to military law liable who commit any of the following offences?—

- (1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes, or uses violence to any such officer.
- (2.) Strikes, or uses, or offers violence to any person, whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer.
- (3.) Resists an escort whose duty it is to apprehend him or to have him in charge.
- (4.) Being a soldier, breaks out of barracks, camp, or quarters.

96. What are the duties and powers of a commanding officer as to—

- (1.) Investigation.
- (2.) Hearing of charge.
- (3.) Procedure.
- (4.) Disposal.
- (5.) Punishments.

97. What is now the regulation with respect to regimental courts-martial,—

- (a.) Convening.
- (b.) Composition.
- (c.) Appointment of president.
- (d.) As to trial of officers or grave offences, and power of awarding punishment.

98. Courts-martial in general. State fully the officers who may and who may not sit as president or members on courts-martial.

99. You are in command of a detachment of troops in a country beyond the seas, and a report is made to you that an offence has been committed by a person subject to military law under your command. How would you proceed, and what are your powers in the matter?

100. What constitutes the crime of "drunkenness on duty"? In computing the amount of fines for drunkenness, what rules are laid down in respect thereof?

101. How are billets obtained for officers, soldiers, or horses? What houses are exempt from having officers or soldiers billeted upon them?

102. State the procedure where a soldier makes a confession of desertion, or of having committed some offence in relation to enlistment; also, if at the time of the confession, or subsequently, he is charged with any other offence.

103. You are acting as prosecutor at a court-martial: the prisoner in bar of trial pleads he is not a soldier, never having been attested: how would you proceed in order to satisfy the court, and for the removal of any doubts on the subject?

104. What are the rules to be observed with regard to the term of imprisonment awarded by a commanding officer, as to

commencement and termination? and what is the rule where a commanding officer has once awarded punishment?

105. What is the general rule, as laid down, in regard to dealing with the crime of theft by a soldier?

106. What is the rule to be observed in the following cases?—

When a soldier is to be arraigned on a serious charge, and charges for minor offences are pending against him, or the circumstances of the serious offence disclose minor offences.

107. Would the fact of an officer who is disqualified from sitting on a court-martial affect his acting as judge-advocate?

Would a court-martial be invalid by reason of any invalidity in the appointment of the judge-advocate officiating at a trial?

108. What are the powers of a general or district court-martial in respect of deferred pay?

109. For what period may a person be enlisted?

What are the rules as to reckoning and forfeiture of the service of a soldier for the purpose of discharge, or of transfer to the reserve?

Under what circumstances may a part, or all such service forfeited be restored?

110. What is done in the case of soldiers who commit offences shortly before embarkation for foreign service, and who are sentenced to imprisonment, either by court-martial or by summary award of their commanding officer?

What general rule is laid down for the guidance of the officer commanding the troops on board, as to the disposal of court-martial prisoners on disembarkation at any foreign station?

111. Can a member of a court-martial be examined, under any circumstances, as a witness?

In the case of the prosecutor being a material witness before a court-martial, when should his evidence be taken, and why?

112. What are the regulations as to forfeiture of decorations, medals, annuities, and gratuities?

113. Where a person, subject to military law, has been tried and acquitted, or convicted by court-martial, or by a competent civil tribunal, what is the law with respect to a

second trial by either for the same offence, and what point is to be borne in mind with reference thereto ?

114. With regard to crimes and punishments, what is the difference in the amount of punishment that may be awarded by general courts-martial for the same offences, if committed on active service, or not on active service ?

Name some of the principal offences, and the penalties attached thereto.

115. When a court-martial deems it necessary to award a sentence upon an officer of penal servitude or imprisonment, what rule is laid down for their guidance ? What effect would a sentence of penal servitude have upon a soldier ; and what may a court award in addition thereto ?

116. What are the rules laid down in the Queen's Regulations with reference to the powers vested in the commanding officer of a detachment—

- (1.) As to awarding summary punishment ;
- (2.) The restrictions in reference thereto.
- (3.) What is expressly laid down for his guidance under certain circumstances ?

117. What modifications are made in the application of the Army Act with respect to her Majesty's Indian forces ?

118. Before a prisoner is arraigned on his trial, state fully the procedure to be observed.

119. State the circumstances under which a soldier shall forfeit his pay.

Give a definition of such absence as would entail a penalty of the kind.

120. What are the powers of general or district courts-martial as to forfeiture of service for the purpose of fixing the rate of pension ?

121. Give in brief terms the classification of the contents of the Army Act ; also, the principle adopted in classifying the strictly military offences.

122. State fully the regulations that are enacted with respect to the custody (arrest, &c.) of persons subject to military law, when charged with offences punishable under the Army Act.

123. Give an explanation of the term "commanding officer," as used in the sections of the Army Act of 1881. With what powers is such functionary vested in respect of dealing summarily with offences?

124. What procedure is to be observed by a commanding officer before convening a court-martial for the trial of an offender?

125. What are the rules laid down with respect to the powers of the confirming authority as to mitigation, remission, and commutation of punishment awarded by courts-martial? After confirmation, by whom only can the punishment be mitigated, remitted, or commuted?

126. To what extent is the application of the rules of evidence to courts-martial procedure limited?

127. Where a court-martial is of opinion, as regards any charge, that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the prisoner in his defence—how may the court act? Or, if the court doubt, as regards any charge, whether the facts proved show the prisoner to be guilty or not of an offence under the Army Act of 1881—state what course is open to them.

128. State fully the proceedings at a court-martial on a finding of guilty, viz. :—

(a.) What evidence should be taken.

(b.) By whom, and how such evidence should be given.

(c.) Who should not give it.

(d.) What privileges are allowed to the prisoner.

129. What are the regulations as to the re-engagement and continuance of service of non-commissioned officers. Also, as to the prolongation of the service of soldiers in certain cases.

130. What regulations are laid down for the guidance of courts-martial as to continuity of trial, and as to adjournment?

131. Give a definition of what is meant by "deferred pay"—

- (1.) As to its issue.
- (2.) Rate.
- (3.) How, and under what circumstances, such may be forfeited.

132. What are the regulations as to the assembly and procedure of courts of inquiry other than that held in the case of illegal absence? viz. :—

- (a.) By whom assembled.
- (b.) Composition.
- (c.) Instructions.
- (d.) Duty and power.
- (e.) Position and privilege of an officer appearing before it.
- (f.) In the event of the report of the court of inquiry resulting in the trial by court-martial of the officer or soldier whose conduct has been under investigation, to what are they entitled?

133. Where a court-martial is reassembled for the purpose of revision, either of finding or sentence, give fully the procedure in either case. Under what circumstances, if any, may the court then receive evidence?

#### EXAMINATION QUESTIONS FOR CAPTAINS.

*(To be answered with the aid of the authorised books.)*

134. Private A. B. is tried by a district court-martial for an offence committed while undergoing a sentence of imprisonment, of which he has only done 52 days up to the date of his second trial. The offence for which he is being tried is one the court are desirous of awarding the full extent of imprisonment in their power.

Write a form of sentence that could legally be awarded.

135. A man of the 1st class army reserve (not called out) enlists into the 75th Foot, at Chatham, on the 22d December 1880.

Frame a charge.

136. Corporal A. B., of the 1st Foot, is tried, on the 4th April 1881, on the following charges :—

Having deserted at Gosport, on the 1st January 1878 ; and having, at the same time and place, fraudulently misapplied the sum of £5, public money intrusted to him.

Point out and correct any error in the foregoing charges.

137. Private B. having been absent without leave from the 3d to the 6th April, on which day, between 5 and 6 P.M., he is taken into camp, drunk, by a civilian. On the 7th, he is brought before his commanding officer, and the following evidence is adduced :—

Serjeant C. states : " At 10 A.M. on the 4th April I called the roll ; the prisoner was absent without leave. I did not see him again until 11 o'clock on the night of the 6th April, when he was in his tent, and then he was sober."

Corporal D. states : " On the 6th April I was returning to camp about 6 P.M. I met a civilian, whom I know is well acquainted with the prisoner ; he told me he had just taken Private B. to his tent, and that B. was drunk."

The civilian has left the place. Put the case in shape triable by court-martial, and state by what description of court he might be tried.

138. Frame a charge to meet the case of a soldier who attempts to commit suicide.

139. Summarise the regulations with regard to the arrest of persons subject to military law.

140. What evidence would you consider sufficient to establish the reasonable presumption that a soldier intended to desert ?

141. Under what circumstances should a charge commence with "conduct to the prejudice of good order and military discipline" ? Give an example. What is the maximum punishment for a crime charged under this heading ?

142. What steps should a convening officer take before deciding on the trial of an offender by court-martial ?

143. Where an officer framing a charge is doubtful whether the offence so capable of being proved by legal evidence would be more accurately described by one word or expression, or by another, say—"a man having in his possession an article belonging to another, and for which he cannot satisfactorily account."

How should he proceed ?

144. Frame a charge against a soldier of the 156th Foot, quartered at Liverpool, who had a soldier of the 147th Foot in his lodgings, supplied him with plain clothes, and is in the act of seeing him on board a vessel bound to New York when apprehended.

145. Private A. B. is charged with making away with his arms, ammunition, or necessaries. Is there anything wrong in such a charge ? If so, correct it.

146. Upon what charges should a soldier be arraigned when the following evidence is forthcoming :—

Serjeant A. states : “ At Gosport, on the 1st December 1881, I called the roll at tattoo ; the prisoner was absent without leave ; his kit was deficient of 2 shirts and 1 pair of boots. I did not again see him until the 5th of December, when he was dressed in plain clothes, and confined in the guard-room.”

Police Constable X. states : “ I apprehended the prisoner at Fareham on the 4th December ; he was dressed in plain clothes ; he had a bundle in which was 2 shirts and 1 pair of boots, which he acknowledged belonged to his kit. I now produce them.”

147. Frame a charge to meet the case of a soldier who, having been discharged with ignominy from the regular forces, afterwards enlists in the Royal Artillery, concealing the fact.

On conviction by general court-martial, to what punishment is he liable ?

148. Serjeant A. B., of the — Regiment, deserted at Colchester on the 10th of January 1879, and at the same time embezzled the sum of £20, being public money intrusted to him. When apprehended on the 31st of March 1882, and brought back to his regiment, he confessed his guilt. Explain upon what charges you would arraign him ; and on conviction, to what punishment would he be liable ?

149. Frame a charge upon the following evidence :—

Corporal A. B., of the — Regiment, states : “ At Gosport, on the 2d of April, about 3 P.M., I was returning to barracks, when I saw Serjeant C. D., of the same corps, drunk in the High Street, creating a disturbance, and with his belt striking



a civilian. I told him to leave off and to go to barracks. He refused to do so, and struck me with his fist. This evidence is corroborated by Private E. F."

150. With what offence should a soldier be charged, who, on being checked by the orderly serjeant for irregularity on parade, throws down his rifle and accoutrements in a defiant manner.

Frame a charge.

151. Write out fully the proceedings at a court-martial on its reassembling for the purpose of revising an illegal finding.

152. Frame a charge to meet the case of a soldier making a false accusation against an officer.

What evidence would be necessary to prove the offence?

153. A special finding has been recorded in relation to alternative charges under Rule of Procedure 43; and the confirming authority is of opinion that the facts found by such special finding constitute, in law, the offence charged by one of such alternative charges.

Write out the form of confirmation to meet such a case.

154. State in brief terms the form for the assembly and proceedings of a summary court-martial.

155. When the position of a prisoner, as respects his conditions of service, has changed between the time when he committed the offence and the time when he is charged,—for instance, if the training of a militiaman has expired, or if a soldier has been discharged and therefore ceased to be subject to military law.

How should the commencement of the charge run?

156. Write out a form of charge to meet the case of a person subject to military law not producing a document required by a court-martial. To what punishment are officers and soldiers liable on conviction of such an offence?

157. How should an officer be charged who does not send in a report or return which he ought to have done?

158. A serjeant having been drunk on duty is placed in arrest, and breaks his arrest. Frame charges.

159. Put the following case in shape triable by court-martial:—

A soldier of the 120th Regiment is accused of having written a letter to the newspapers containing gross calumnies upon the officers of the 120th Regiment.

State whether or not there would be any irregularity in trying the man by a court-martial constituted as follows—viz., Major A., 110th Regiment, president; Captain B., Rifle Brigade; Captain C., 120th Regiment; Lieutenant D., Royal Artillery; and Lieutenant E., 120th Regiment.

160. Under what circumstances, and for what purpose, may a prosecutor be allowed to produce evidence after the prisoner has entered upon his defence?

161. Give an explanation of the meaning, as laid down in the Army Act, of the expression “discharged with disgrace from any part of her Majesty’s forces.”

162. How, and under what sections of the Army Act, should the following cases be charged?—

(1.) A non-commissioned officer striking or otherwise ill-treating a soldier.

(2.) A private soldier striking another soldier.

To what punishment are either of the above liable on conviction by court-martial?

#### EXAMINATION QUESTIONS FOR LIEUTENANTS.

*(To be answered with the aid of the authorised books.)*

163. What form of sentence must be used when a non-commissioned officer is reduced by a court-martial to a lower grade, or to a private?

Write out a sentence to meet each case.

164. Write out charges to meet the case of a soldier striking or using violence to his superior officer in the execution of his office, and using threatening or insubordinate language to him.

165. Give fully a summary of the evidence that would be required to sustain such charges.

(a) States . . .

(b) States . . .

(c) States . . .

166. When a prisoner is guilty of any act, conduct, disorder, or neglect; in framing a charge to meet such a case, what is it essentially necessary that such charge should allege?

167. Write out what you consider would be an adequate sentence by a district court-martial, on a soldier who is convicted of the following offences, viz. :—

Absenting himself, without leave, from his regiment.

Making away with the whole of his kit.

Fraudulently enlisting into the Scots Greys, and obtaining a free kit.

Absenting himself from that corps, and enlisting into the Royal Artillery.

Prisoner's character is very bad; and he is reported medically unfit to undergo hard labour.

168. Private A. B., while serving in the 4th Foot, enlists into the 60th Brigade Depot. Frame a charge to meet the case.

169. What is the rule with regard to "italic headings" and "marginal references," in regard to framing charges?

170. Private A. B. of the — Regiment, when a defaulter, breaks out of barracks on the 4th October 1880; Private C. D. of the same corps meets him in the streets, and endeavours to persuade him to return; Private A. B. knocks him down, but is shortly brought into barracks by the police. What section of the Army Act bears on the case? and in framing charges, what is it essentially necessary they should allege?

171. Frame a charge against a soldier for writing an anonymous letter to his superior officer, and give in brief terms a summary of the evidence necessary to substantiate such a charge.

172. A soldier is charged with embezzlement, but as the trial proceeds, the evidence adduced bears more on a case of theft; write out a "finding" to meet such a case.

173. Give in detail a summary of the evidence necessary to substantiate the following charges against Private —, of the — Regiment:—

Absent from tattoo roll-call, when a defaulter at Portsmouth, on the 1st April 1881.

Deficient of certain articles of his kit.

Taken up by the police at Gosport on the 3d April 1881.

174. A court-martial has convicted a lance-serjeant and a lance-corporal of offences for which they consider the slightest sentence of reduction allowed by law a sufficient punishment. Write that sentence in each instance.

175. Write out a charge to meet the case of a military witness refusing to give evidence at a court-martial.

176. Frame charges in the case of a soldier firing off his rifle, loaded with ball-cartridge, in his barrack-room.

177. How should a soldier be charged who persuades or endeavours to persuade a soldier to desert from her Majesty's service?

Upon conviction, to what punishment is he liable if such offence be committed when on active service, or under any other circumstances?

178. State briefly the summary punishments a commanding officer is authorised to award.

179. Under what circumstances may a court-martial be dissolved? Is the prisoner in this case liable to be tried again?

180. What constitutes insubordination? Private A. B. of the — regiment, on being spoken sharply to by the corporal of his room, says, "I will see the Colonel, to get transferred to another company." Could he be tried by court-martial? If so, frame a charge to meet the case.

181. Under what section of the Army Act should a militiaman, or an army reserve man (not called out), improperly enlisting in her Majesty's regular forces, be charged? Is it legal to try the latter for desertion if he does not appear when called out for training?

182. What is the order of procedure at a general court-martial from the time the prisoner pleads to the charge until the finding.

(a.) When the prisoner calls witnesses?

(b.) When he does not?

183. Frame a charge to meet the case of a soldier sleeping on his post.

184. You are prosecutor in the above case. Give briefly in detail the evidence necessary to substantiate the charge.

185. Give a summary of the evidence that would be required at an inquiry into the cause of any injury received by a soldier, say, hand shot through. On such evidence, who forms an opinion?

186. Write out a sentence that could legally be carried into effect on a soldier convicted of using traitorous or disloyal words regarding the Sovereign.

187. A soldier is tried on a charge of desertion, but the evidence fails to substantiate any more serious offence than absence without leave. Write out a proper finding.

188. Private A. B., of the — Regiment, stationed at Plymouth, absents himself on the 1st September 1881. His kit is deficient of 2 shirts, 1 pair of boots, and 1 pair of socks.

On the 10th September he enlists in the Royal Artillery at Woolwich, and receives a free kit, value £3.

On the 20th September he is absent without leave, and his kit deficient of 1 pair of trousers and 2 shirts.

On the 8th October he is apprehended in plain clothes.

There are no previous convictions; frame charges to meet the above facts.

189. Write out a finding, and the maximum sentence that could by a general court-martial be awarded in the above case.

190. At Canterbury, on the 10th March 1882, Serjeant A. B., of the — Regiment, ordered Private C. D. to put away his boots in the barrack room. He took them up and held them in a threatening manner at the serjeant, and said, "You brute, I will knock your head off." He was ordered to be confined, and on the way to the guard-room he kicked Corporal E. F., and tore his tunic.

Frame charges to meet the case.

191. Sergeant B., of the — Regiment, is tried on a charge of making away with £8 public money intrusted to his charge, but the evidence proves that he actually received and made away with £10.

The court found him guilty of making away with the £10, sentenced him to reduction, and to make good that amount.

Has the court in any way erred? If so, correct the error.

192. Write out charges to meet the following case:—

Private John Smith, of the 180th Regiment, strikes Private John Allen in the barrack-room. Corporal Bullock orders an escort to take Smith to the guard-room, on which Smith knocks the corporal down with his clenched fist. Prisoner is tried by court-martial; his character is very bad: give an adequate sentence.

193. May, or may not, a man be charged with making away with, by pawning and selling, his arms and necessaries? If not, explain reasons, and state how he should be charged.

194. What is carefully to be observed in the charging of officers or soldiers with offences?

Give an example.

195. A soldier in hospital with weak eyes is discovered putting lime into them. Frame a charge. Name the punishment the conviction of such an offence would entail.

196. Write out the form of sentence to meet the case of a Captain (say third in his rank) who has been sentenced by court-martial to forfeiture of seniority of rank and to reprimand.

197. What steps should be taken by a commanding-officer, if a soldier has apparently deserted?

198. Lieutenant and Acting Paymaster A. B., of the A. Regiment, is accused of having received the sum of £40 from Lieutenant C. D., of the B. Regiment, and £20 from Lieutenant E. F., of the C. Regiment, as payment for the trouble of arranging an exchange between them. Frame a charge upon which Lieutenant A. B. could be arraigned.

199. Explain what you mean by "leading questions." Why is hearsay evidence rejected?

200. A district court-martial thinks it advisable to pass the most severe sentence in its power upon a soldier, whom it has found guilty of a second case of desertion and making away with regimental necessaries. Write out such sentence.

201. Give the form of charge where a soldier requests to be tried by court-martial instead of submitting to the summary award of his commanding officer for the crime of absence without leave. How would you act as prosecutor in such a case?

## INDEX.

---

- Absence, without leave, from parade, school, &c., 20; of president, or of members, from court-martial, 85, 115.
- Accomplice, 173, 182, 191.
- Accusation, false, 25.
- Action against member of court-martial, 274.
- Active service, definition of, 253.
- Addresses of prosecutor and prisoner, 99.
- Admissions as evidence, 187.
- Affirmation, *see* Declaration.
- Aggravated drunkenness, definition of, 38.
- Aliens, enlistment of, 221.
- Alternative charges, 56, 96, 101.
- Amendment of charge, 93, 166.
- Annual Act, Army, 3.
- Apprentice, claim of master, 221.
- Army Act, connection of, with old Acts, 275; application of, to old soldiers, 275.
- Army reserve, Class I., 258; Class II., 259.
- Army reserve men, punishment of, 259, 262.
- Arrest, 45.
- Arson, 34.
- Articles of war, power to make, 207.
- Assaulting a constable, 17.
- Attempt to commit an offence, 165.
- Attest, power to, 220.
- Attestation paper as evidence, 178.
- Authority, power to delegate, 274.
- Auxiliary forces, when subject to military law, 243-245; definition of, 255.
- Badges, forfeiture of, 206.
- Belief, evidence as to, 186.
- Bill of Rights, 4.
- Billeting, prices in respect of, 5; offences in relation to, 26; law in regard to, 231.
- Blank, signing in, 25.
- Boards, 211.
- Bounds, crime of being out of fixed, 20.
- Breaking barracks, 17.
- Burglary, 33.
- Canteens, licences of, 275.
- Cashiering, peremptory, in one case, 21; definition of, 36.
- Character, evidence as to, 171.
- Charge, investigation of, 46; disposed of by commanding officer, 47; against officer, non-commissioned officer, or soldier, 49, 58; amendment of, 93, 166.
- Charge - sheet, framing of, 52; separate, 54; commencement of, 62.
- Charges, illustrations of, 64; forms of, Appendix I., 277.
- Circumstantial evidence, 180.
- Civil Court, meaning of, 256.
- Civil law, adjustment of military and, 239.
- Civil offences, 31.

- Civil power, refusing to give up to, 30; offence of obstructing the, 240.
- Civilian witness, punishment of, 241.
- Civilians, punishment of, 240; application of the Army Act to, in certain cases, 243, 250.
- Classification, of Army Act, 6; of offences, 8; of prisoners, 156.
- Closed Court, 118.
- Colonial forces, when subject to military law, 245.
- Combatant officer, 81.
- Command, what is a lawful, 16; power to regulate, 272.
- Commanding officer, powers of, 69; definition of, 76, 157, 254.
- Commissions, trafficking in, 34, 241.
- Competent military authority, definition of, 230.
- Complaint by officer, 34; by soldier, 34; frivolous, 35.
- Condonation of offences, 46.
- Conduct to prejudice of military discipline, 30, 251.
- Confessions as evidence, 187.
- Conspirators, evidence of, 173.
- Constable, assaulting a, 17.
- Contempt of Court, punishment of, 26, 242.
- Continuity of trial, 114.
- Conviction of offence involving a less punishment, 160, 165.
- Copies, when received in evidence, 176; certified, 177.
- Corporal punishment in prison, 273; *note* at p. 70.
- Corps, appointment to, 216; definition of, 255.
- Council, order in, 252.
- Counsel at courts-martial, punishment of, 146, 242.
- Court, open, closed, 113.
- Court of inquiry, proceedings of, as evidence, 189.
- Courts of inquiry, on illegal absence, 208; other than on illegal absence, 209.
- Courts of Requests, 236.
- Courts-martial, offences in relation to, 25; description of, 77; convening, 78; composition, 79; jurisdiction, 80; members, qualification of, 81; appointment and rank of members, 82; procedure on reduction of members, 85; death, legal sentence of, 85; procedure of officer convening, 86; recommendation to mercy, 86, 104; insufficient number of members, 87; constitution of Court on assembly, 88; first inquiry, 88; challenge, 89; swearing, 91; arraignment, 93; procedure on plea of "guilty," 95; procedure on plea of "not guilty," 97; finding, 100; acquittal, conviction, 102; sentence, 104; confirmation, revision, 105; approval in certain cases, 107; powers after confirmation, 107; promulgation, 109, 126; confirmation of informal proceedings, 111; joint prisoners, 51, 113, 191; absent member, 115; illness of prisoner or president, 85, 115; opinion, taking of member's, 115; proceedings, record of, &c., 122; proceedings, loss of, 124; proceedings, time preserved, 125; Field-General, 126; summary, rules for, 129; summary, confirmation of, 132; president, duties of, &c., 139; prosecutor, duties of, &c., 140; counsel at, 146; civil action against members of, 274.
- Crime, definition of, 7; failing to deliver, 23.
- Crimes, their punishment, summary of, 40.
- Date, Army Act terminates, 5.
- Day, what constitutes for deduction of pay, 71, 202.
- Debt, 234.
- Declarations, false, 25; dying, 183.
- Defence, prisoner's, preparation for, 50; procedure for, 98.
- Deferred pay, 204.
- Deficiency of kit, &c., 24.
- Definition, military law, 1; of competent military authority, 230.



- Definitions, 253.  
 Delegate authority, power to, 274.  
 Depositions, 184.  
 Deserter, militia, liability of, 268-271.  
 Deserters, apprehension of suspected, 157; confession of, 157; regulation as to, 158; pretended, 240.  
 Desertion, punishment, definition of, 17; connivance at, 20.  
 Detachment, powers of commanding officer, 73.  
 Direct and indirect evidence, 180.  
 Disclosures, injurious, 29.  
 Discharge, with disgrace, definition, punishment for enlisting after, 28; authority to, 219.  
 Disease, producing or aggravating, 22.  
 Disgraceful conduct of officer, 21; of soldier, 21; definition of, 38.  
 Disobedience to superior, 15.  
 Division of Army Act, 6.  
 Documentary evidence, 175.  
 Documents, falsifying, 25; attested, 175; public, 176; private, 176; made evidence by the Army Act, 178.  
 Drunkenness, punishment of officer and soldier for, 22; aggravated, definition of, 38; punishable by commanding officer, 74.  
 Duel, penalty for fighting a, 30.  
 Duty, meaning of being on, 23.  
 Dying declarations, 183.  
 Embezzlement, distinction between larceny and, 33.  
 Embezzling, 21.  
 Emergency, requisition of, 232.  
 Enemy, definition of, 256.  
 Enlist, power to, 220.  
 Enlistment, offences in relation to, 28; conditions of, 212; proceedings on, 214; of aliens, 221; validity of, 229; offences as to, 229; irregular, of militiamen, 266.  
 Equipment, 24, 234.  
 Escaping from confinement, 24.  
 Evidence, rules of, 163; rules of English law only, 163; what must be proved, 164; as to character, 171; of general tendency, 172; to prove identity, 172; to prove intention, 173; of conspirators, 173; rule of best evidence, 174; primary and secondary, 175; documentary, 175; documents made, 178; direct and indirect, 180; circumstantial, 180; hearsay, 181; rule as to opinion, 185; as to belief, 186; admissions as, 187; confessions as, 187; turning king's, 191; summary of chief points regarding, 199; a route is, 231; as regards reserve men, 265.  
 Examination questions, captains, 291, 305; lieutenants, 296, 309.  
 Execution of sentences, 152.  
 Exemption, from tolls, from civil process, 234; from execution, 235; from jury, from municipal office, 236.  
 Experts, 186.  
 False evidence, punishment, 26.  
 „ answer on enlistment, 28, 229.  
 „ personation, 241.  
 Falsifying documents, 25.  
 Felony—Misdemeanour, distinction between, 32.  
 Finding, special, 100, 167.  
 Followers, when subject to military law, 245.  
 Forfeiture, punishment of, 37; by court-martial, 202; of pension and deferred pay, 204; of medals, 205; of badges, 206; of service, 214.  
 Forgery, 33.  
 Forms of charges, Appendix I., 277.  
 Framing charges, 52.  
 Fraudulent enlistment, crime of, its punishment, 18; of militiaman, 269, 272.  
 Furlough, extension of, 162.  
 Gibraltar, civil crimes triable at, 31.  
 Guard, commander failing to deliver, crime, 23.  
 Guards, terms of enlistment in, 228.  
 Handwriting, proof of, 178.

- Hearsay evidence, 182; rule of, 182; exceptions to rule of, 183, 184.  
Horse, ill-treating, &c., 24.  
Housebreaking, 34.  
Husband as witness, 190, 242.
- Ignominy, discharge with, 36.  
Illegal, or excessive punishment, 76.  
Impressment, offences in relation to, 27; of carriages, &c., 233.  
Imprisonment, gap between penal servitude and, 35; terms of, 105, 155; execution of, 153.  
India, application of military law to troops in, 247.  
Indian forces, when subject to military law, 245.  
Injurious disclosures, 29.  
Inquiry, *see* Court of Inquiry.  
Insanity, finding on, 159.  
Instruction, officers under, present in closed court, 113.  
Insubordination, 16.  
Intention, criminal, 7; of deserting, 18, 95.  
Interpreter, swearing of, 92, 117.  
Investigation of charge, 46.  
Irrelevant evidence, 174.  
Italics, words in, form no part of the Army Act, 53.
- Joint trial, 51, 113, 190.  
Judge-Advocate, at a court-martial, 142.  
Judge-Advocate General, 145.  
Judicial notice, 168.  
Jurisdiction, 238.
- King's evidence, 191.
- Labourer, indentured, claim to, 222.  
Lance rank, 37, 53.  
Larceny, definition of, 33.  
Leading questions, 194.  
Letters, 178.  
Limitation of time of trial, 239.  
Locality of crime, 239.  
Losing by neglect, kit, &c., 24.
- Maiming, 21.  
Majority, absolute, necessary, 116.  
Making away with kit, &c., 24.
- Malice, 7, 8.  
Malingering, offence, punishment, definition of, 21, 22.  
Manslaughter, when triable by court-martial, definition of, 31, 32.  
Marines, application of military law to, 5; of Army Act to, 246.  
Martial law, 1, 4.  
Medals, 205.  
Medical examination of prisoners, 89.  
Member of court-martial, liability to civil court of, 274.  
Members of court-martial, list of, to be delivered to prisoner, 51.  
Mercy, recommendation to, 86, 104.  
Military law, definition of, 1; where contained, 3; how continued, 3; reasons for necessity of having, 4; adjustment between civil and, 239; persons subject to, 243.  
Militia Act, 1882, 266.  
Militia deserter, liability to further service, 270, 271.  
Militia reserve, 260.  
Militiamen, punishment of, 266, 268; training and embodiment of, 267; notice to, 268; desertion or absence of, 268, 270, 271; fraudulent enlistment of, 269, 272; attempt to commit offence, 270; triable by civil or military court, 271.  
Minor punishments, *see* Powers of commanding officer.  
Misdemeanour—Felony, distinction between, 32.  
Month, meaning of, 105.  
Murder, when triable by court-martial, definition of, 31, 32.  
Mutiny, punishment for, definition of, 14, 15.
- Necessaries, unlawful purchase of, 242.  
Neglect to obey orders, 17.  
Non-commissioned officer in execution of office, 15; liability to minor punishments, 71; special provision as to, 249; trial of, on board ship, 252; definition of, 254.  
Number of soldiers allowed (Annual Act), 5.

- Oath, 192; forms of, Appendix II., 288.
- Obstructing civil power, 240.
- Offence, what constitutes condonation, 46.
- Offences, classification of, 8; punishable with death, 10, 40; with penal servitude, 11, 41; more severely on active service, 11; in relation to courts-martial, 25; to billeting, 26, 233; to impressment, 27, 233; to enlistment, 28, 229; punishable by ordinary law, 31; by commanding officer, 75.
- Officer, refusing to obey, 16; definition of, 254.
- Onus probandi*, 169.
- Open court, 113.
- Opinion not evidence, 185.
- Order, may be issued by authorised officer, 274; not invalid because informal, 274.
- Orders, neglect to obey, 17.
- Particulars of charge, 59.
- Pay, detaining soldiers, punishment for, 29; deductions from, 200, 202.
- Penal servitude, gap between imprisonment and, 35; execution of, 152.
- Pension, 204.
- Peremptory punishment, 21.
- Perjury, definition of, 33.
- Personation, false, 241.
- Persons subject to military law, 243.
- Place of trial, 239.
- Plea, special, 94.
- Political agent, when subject to military law, 243.
- Post-office corps, 222.
- Powers of commanding officer, 69.
- Preamble to the old Mutiny Act, 4.
- Prejudice, act to the prejudice of good order, &c., 30.
- Prisoner, warning of, 50; charge read to, 50; joint trial of, 51, 113, 190; appearance of, in Court, 89; friend or counsel of, 147; statement of, defence of, 140, 148, 151.
- Prisoners, offences in relation to, 23; permitting escape of, 23; detaining unnecessarily in custody, 23; classification of, 156.
- Prisons, regulations about, 272, 273.
- Private documents, 176.
- Procedure, on charge against officer, 49; on confirmation, &c., 108; on incidental question, 116.
- Proceedings, custody, how disposed of, 124, 125; copy of, 161.
- Promulgation, 109, 126.
- Proof, facts not requiring, 168; by which side must be given, 169; burden of, 170.
- Property, offences in relation to, 24; corrupt dealings about supplies, 24.
- Prosecution, 98.
- Prosecutor, status before Court, 89.
- Provost-marshal, 152.
- Provost prison, 156.
- Public documents, 176.
- Punishment, the maximum, 9; scale of, 35; principle of arrangement, 35; of civilians, 240.
- Question, procedure on incidental, 116; decided by majority, 116; by members, time for putting, 121; leading, 194; examination, captains, 291, 305; examination, lieutenants, 296, 309.
- Ranks and appointments, 37.
- Ranks, crime of quitting the, 20.
- Re-engagement, 218; terms now in force, 222, 226.
- Recruiting, unlawful, 240.
- Redress of wrongs, 34.
- Refreshing memory, 195.
- Regular forces, definition of, 255.
- Regulations now in force regarding service and re-engagement, 222.
- Relevancy, rule of, 171.
- Repeal, 265, 276.
- Report, neglect to, 25.
- Reprimand, punishment of, 36.
- Requests, Courts of, 236.
- Requisition of emergency, 232.
- Res gestæ*, 171, 183.
- Reserve Forces Act, 258.

- Reserve forces, calling out of, 219, 261; definition of, 255; training of, 261.
- Reserve men, desertion or absence of, 262; procedure on illegal absence of, 263; notices to, 263; trial of, 264; when tried by civil or military Court, 264, 265; documentary evidence regarding, 265; not allowed to go abroad, 265.
- Resisting escort, 17.
- Right of trial in lieu of summary award, 72.
- Robbery, 33.
- Route is evidence, 231.
- Rules of procedure, power to make, 207.
- Safeguard, definition of term, 13.
- Scale of punishments, 35.
- Scandalous conduct of officer, 21.
- Sea, trial at, 252.
- Secondary evidence, 177.
- Sedition, 34; definition of, 15.
- Sentences, execution of, 152; commencement of, 72, 155.
- Service, terms of, 212; forfeiture of, 213; terms now in force, 222, 224.
- Shorthand writer, swearing of, 92, 117.
- Short service, 222.
- Ship, law on board her Majesty's, 251; law on board ship not commissioned, 253.
- Signing in blank, 25.
- Soldier, definition of, 255.
- Special plea, 94.
- " finding, 100, 167.
- Stealing, 22, 33.
- Stolen property, restitution of, 160.
- Statements, false, 25; by prisoner, 141, 143, 161; what are admissible, 170.
- Status, 89, 239.
- Striking a superior officer, 15; person in whose custody offender is, 16.
- Striking or ill-treating soldier, 29.
- Substance of charge only need be proved, 166.
- Suicide, crime of attempting, 30.
- Summary court-martial, form for proceedings, 134.
- Summary jurisdiction, court of, 256.
- Summary of crimes and punishments, 40; of evidence, taking of, 47; of evidence, copy to be given to prisoner, 48, 49, 51; to be compared with parole evidence, 87; how far admissible in evidence, 185.
- Summary punishment, 37, 69; rules for by Secretary of State, 38.
- Summing up, 100.
- Summoning witnesses, 161.
- Summons, form of, Appx. II., 290.
- Superior, disobedience to, 15.
- Superior officer, striking, 15.
- Swearing, *see* Oath.
- Swearing, to try several prisoners, 116.
- Synopsis of part of the Army Act, 272.
- Terms of imprisonment, 105, 155.
- Theft, definition of, 33; crime of, 22.
- Threatening or insubordinate language to superior officer, 15.
- Time, reckoning, 71, 105, 155, 202; in framing charges, 60; for trial, 113; barring trial, 239.
- Toll, illegally demanding, 233, 234, 242.
- Tools, casting away, &c., 10.
- Treason, when triable by court-martial, definition of, 31, 32.
- Trafficking in commissions, 34, 241.
- Traitorous or disloyal words, punishment for, 29.
- Transfer from corps, 216.
- Treason-felony, when triable by court-martial, definition of, 31, 32.
- Tried, cannot be twice, 238.
- Variances in charge, 60, 166.
- View of place, 85, 113.
- Violence to superior, 15.
- Volunteers, vi, 67, 243, 244, 246.
- Votes, collecting, 116; casting, 85; on challenge, 89.
- Warrant-officer, terms of service, 223; special provisions as to, 249.

- Wife, as witness, 190, 242; and child, maintenance of, 235; or husband may be witness, 242.
- Witness, prosecutor as, 98; calling of, 118, 121; procuring, &c., 119; questioning, &c., 120; examination of, 120, 192; cross-examination of, 120, 195; re-examination of, 121, 196; Judge-Advocate as, 143; summoning or ordering, 161; number required, 182, 189; competency of, 190; credibility of, 193; refreshing memory, 195; objections to question to, 197; confronting, 197; privilege of, 197; punishment of civilian, 241.
- Writings as evidence, 175.
- Wrongs, redress of, 34.
- Year, meaning of, 256.
- Yeomanry, vi, 243, 244, 245.

THE END.









